MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

H.R. 1864

WEDNESDAY, MAY 25, 2011

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MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT OF 2011

WEDNESDAY, MAY 25, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS,
COMMERCIAL AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:27 p.m., in room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Present: Representatives Coble, Gowdy, Franks, Cohen, and Johnson.

Staff Present: (Majority) Travis Norton, Counsel; Johnny Mautz, Counsel; Allison Rose, Professional Staff Member; Anne Woods Hawks, Professional Staff Member; Ashley Lewis, Clerk; (Minority) Norberto Salinas, Counsel; and James Park, Counsel.

Mr. COBLE. Ladies and gentlemen, good to have all of you here, by the way. And I have been told that there is a vote on now, and I have furthermore been told that it may last as long as an hour, an hour and a half.

And I apologize to you all for that, but I think with that in mind, our best bet is to just stand in recess until that last vote is taken.

Staff will be here to advise the hearing room attendees what will happen. So I apologize to you for that, but best-laid plans of mice and men, you know, sometimes go awry.

So if you all will just stand easy and see you in an hour, an hour and a half. And meanwhile, we will stand in recess until that time.

Thank you.

[Recess.]

Mr. COBLE. I apologize to you all for the untimely delay. Thank you for your patience, and we will get underway here as soon as another Member shows up.

Thank you.

[Pause.]

Mr. COBLE. We will come out of recess and reconvene, and again, thank you all for your patience.

And before I give my opening statement, I want to take the liberty of extending a sincere happy birthday greeting to the distinguished gentleman from Memphis, and I will not divulge the age, but he is still a young man.

Mr. COHEN. Thank you, thank you, thank you.

Mr. COBLE. Ladies and gentlemen, on the way back to Washington, D.C., this past weekend, I looked around in the airport back home and saw a number of business travelers getting ready to board airplanes, leaving North Carolina to perform work in another State. This occurs practically every day in America, involving every State in America.

The American workforce is more mobile in the 21st century than it has ever been. Nonetheless, a patchwork of State income tax laws place a significant burden on people who travel for work and their employers, many of which are small businesses. Currently, 41 States tax the income earned by nonresidents for worked performed there.

I do not take issue with the right of those States to impose an income tax, but I am concerned that the disparity of tax rules among those States is, in many instances, damaging small businesses and stifling economic growth. For example, some States require a nonresident to pay income tax if he or she works in that State for just 1 day. Other States do not collect tax until the nonresident works for a certain number of days in the jurisdiction.

Small businesses must expend considerable resources just to figure out how much they must withhold for their traveling employees in 41 different jurisdictions. Employees are also confused about when their tax liability is triggered and in which States they must file a tax return.

Such wide variety among State income tax laws is unnecessarily cumbersome. Many nonresidents who file a tax return in a State end up getting all of their tax refunded to them. In those cases, all of the time and energy that employees and small businesses spend figuring out where the taxes are owed and filling out income tax returns is ultimately wasted.

On May 12, I introduced H.R. 1864, the Mobile Workforce State Income Tax Simplification Act, along with the gentleman from Georgia, Mr. Johnson, a Member of this Subcommittee who has worked on this bill previously.

The bill we have introduced would establish a uniform Federal framework for State income tax liability. It would simplify State income tax rules for employees and employers by requiring that a nonresident employee perform work in a State for at least 30 days before tax liability or employer withholding is triggered. States would then remain free to impose any tax rate they choose.

Small businesses are the engine that will drive the American economy. Tax simplification at both the Federal and State levels will allow small businesses to predict their liabilities with accuracy and expend fewer resources researching the nuances of each State's tax law. The money they would have spent hiring accountants and tax attorneys can then be spent in creating meaningful jobs and growing the economy.

I look forward to hearing from our distinguished panel of witnesses today and in working with Mr. Johnson furthermore to enact a Federal framework for State income tax simplification.

I am now pleased to recognize the distinguished gentleman from Memphis, the birthday boy, Mr. Cohen, for his opening statement, at which time I will then recognize Mr. Johnson.

[The bill, H.R. 1864, follows:]

I

112TH CONGRESS
1ST SESSION

H. R. 1864

To limit the authority of States to tax certain income of employees for employment duties performed in other States.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2011

Mr. COBLE (for himself and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To limit the authority of States to tax certain income of employees for employment duties performed in other States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mobile Workforce State Income Tax Simplification Act of 2011".

SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAXATION OF EMPLOYEE INCOME.

(a) IN GENERAL.—No part of the wages or other remuneration earned by an employee who performs employ-

ment duties in more than one State shall be subject to income tax in any State other than—

(1) the State of the employee's residence; and

(2) the State within which the employee is present and performing employment duties for more than 30 days during the calendar year in which the income is earned.

(b) WAGES OR OTHER REMUNERATION.—Wages or other remuneration earned in any calendar year are not subject to State income tax withholding and reporting unless the employee is subject to income tax under subsection (a). Income tax withholding and reporting under subsection (a)(2) shall apply to wages or other remuneration earned as of the commencement date of duties in the State during the calendar year.

(c) OPERATING RULES.—For purposes of determining an employer's State income tax withholding and information return obligations—

(1) an employer may rely on an employee's determination of the time expected to be spent by such employee in the States in which the employee will perform duties absent—

(A) actual knowledge of fraud by the employee in making the estimate; or

(B) collusion between the employer and the employee to evade tax;

(2) if records are maintained by an employer recording the location of an employee for other business purposes, such records shall not preclude an employer's ability to rely on an employee's determination as set forth in paragraph (1); and

(3) notwithstanding paragraph (2), if an employer, at its sole discretion, maintains a time and attendance system which tracks where the employee performs duties on a daily basis, data from the time and attendance system shall be used instead of the employee's determination as set forth in paragraph (1).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this Act:

(1) DAY.—

(A) An employee will be considered present and performing employment duties within a State for a day if the employee performs the preponderance of the employee's employment duties within such State for such day.

(B) Notwithstanding subsection (d)(1)(A), if an employee performs material employment duties in a resident state and one nonresident

state during one day, such employee will be considered to have performed the preponderance of the employee's employment duties in the nonresident state for such day.

(C) For purposes of subsection (d)(1), the portion of the day the employee is in transit shall not apply in determining the location of an employee's performance of employment duties.

(2) EMPLOYEE.—The term ''employee'' shall be defined by the State in which the duties are performed, except that the term ''employee'' shall not include a professional athlete, professional entertainer, or certain public figures.

(3) PROFESSIONAL ATHLETE.—The term ''professional athlete'' means a person who performs services in a professional athletic event, provided that the wages or other remuneration are paid to such person for performing services in his or her capacity as a professional athlete.

(4) PROFESSIONAL ENTERTAINER.—The term ''professional entertainer'' means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis, provided that the wages or other remuneration

are paid to such person for performing services in his or her capacity as a professional entertainer.

(5) CERTAIN PUBLIC FIGURES.—The term "certain public figures" means persons of prominence who perform services for wages or other remuneration on a per-event basis, provided that the wages or other remuneration are paid to such person for services provided at a discrete event in the form of a speech, similar presentation or personal appearance.

(6) EMPLOYER.—The term "employer" has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 3401(d)) or shall be defined by the State in which the duties are performed.

(7) STATE.—The term "State" means each of the several States of the United States.

(8) TIME AND ATTENDANCE SYSTEM.—The term "time and attendance system" means a system where the employee is required on a contemporaneous basis to record his work location for every day worked outside of the state in which the employee's duties are primarily preformed and the employer uses this data to allocate the employee's wages be-

tween all taxing jurisdictions in which the employee performs duties.

(9) WAGES OR OTHER REMUNERATION.—The term "wages or other remuneration" shall be defined by the State in which the employment duties are performed.

SEC. 3. EFFECTIVE DATE.

This Act shall be effective on January 1, 2013.

○

Mr. COHEN. Thank you, Mr. Chairman.

I appreciate your recognition and your greetings and your birthday greetings. Every birthday is a good birthday.

Mobility has long been the lifeblood of the modern American economy. Entire metropolitan areas depend on regional workforces where workers regularly cross State lines. Indeed, in my home city of Memphis, we buttress Mississippi and Arkansas, and lots of folks work in those States by automobile, and others fly through our great hub airport to other places in the country and do business.

Businesses rely sometimes on their most skilled employees to travel, spend extended period of times away from home to work on projects. For such employers, skills and expertise are essential. FedEx sends folks all around the country all the time, doing work for FedEx and coming back.

States, meanwhile, have a legitimate interest in taxing income earned within their borders, including income earned by nonresidents. Unfortunately, this sometimes leads to some confusion regarding when and where a nonresident is required to pay income tax and under what circumstances an employer is obliged to withhold such taxes and report relevant tax information to the relevant government agency.

H.R. 1864, the Mobile Workforce State Income Tax Simplification Act of 2011, which should have a simplified title, is designed to address these concerns. The bill would, among other things, allow a State to impose income taxes on nonresidents when the nonresident is present and performing employment duties for more than 30 days during the calendar year in which the income was earned.

The bill also clarifies employers' withholding and reporting obligations by specifying that an employer may either rely on an employee's determination of the time the employee expects to perform duties in a given State or use data from a time and attendance system which tracks where an employee performs duties on a daily basis in order to determine the liability obligations that that person might have to that particular governmental jurisdiction.

My home State of Tennessee has no State income tax and has a very regressive tax code. But that is neither here nor there. So it does not stand to lose in any particular way if this legislation were enacted, as some other State's taxing authorities assert with respect to their States.

I think this legislation, if enacted, would have at least some positive impact on the Tennessean residents who work outside Tennessee for 30 or fewer calendar days in a given tax year, as they could avoid paying State income taxes altogether, and one of the reasons why some people do come to Tennessee and live besides the wonderful artesian water that we have, the barbecue, the basketball, and the hills in east Tennessee, and the other splendid activities, especially the people and those that live in the 9th District.

This bill could also provide some useful clarification for Tennessee businesses that depend on sending employees out of State. I applaud the proponents of this bill for amending its language from the language originally introduced back in the 110th Con-

gress, when I was a cosponsor, specifically in response to the concerns raised by the States.

Most significantly, the original language required the nonresident employee work more than 60 calendar days before a State could tax that nonresident. The revised language, as noted, reduces that threshold by half to 30 days.

My understanding is the States and the proponents of H.R. 1864 are very close to an agreement on this matter, and the only remaining major sticking point appears to be the appropriate threshold number of days. I have been told the States are pushing for a 20-day threshold. That difference between 20 and 30 is not insurmountable. It is 10, just into double figures. So that could be worked out, I feel confident.

This Subcommittee has considered this issue for more than 4 years now. I strongly urge the States and other interested parties to reach a consensus on this matter soon. I would like to see the consensus worked out soon so this can be a very strong bipartisan bill where I work with my colleague who wishes me birthday greetings as a co-prime sponsor and see that this bill does become law and save burdensome work and make my accountant, Michael Uiberall, who e-mailed me today, happy. [Laughter.]

With that, I would surrender the balance of my time.

Mr. COBLE. I thank the distinguished gentleman from Tennessee.

Normally, we restrict opening statements to the Chairman and the Ranking Member. But in view of the distinguished gentleman from Georgia's activity in this bill, I am pleased to recognize Mr. Johnson for his opening statement.

Mr. JOHNSON. Thank you, Representative Coble, my good friend.

And happy birthday to you, happy belated birthday to you.

I am pleased to work with you in the 112th Congress on the Mobile Workforce State Income Tax Simplification Act of 2011, H.R. 1864. This is an important bill that will help workers and businesses, large and small. I have been working on this bill since I was a freshman in the 110th Congress, and I am pleased to have introduced it this Congress with you.

We live in an ever-increasing mobile economy. Every day, thousands of Americans travel outside of their home State on business trips for brief periods of time. Many States have their own set of requirements for filing nonresident individual income tax returns that most Americans are not aware of and don't understand.

For example, if an Atlanta-based employee of a Chicago company travels to headquarters on a business trip once a year, that employee would be subject to Illinois tax, even if his annual visit only lasts a day. However, if that employee travels to Maine, her trip would only be subject to tax if her trip lasts for 10 days. If she travels to New Mexico on business, she would only be subject to tax if she was in the State for 15 days.

The Mobile Workforce State Income Tax Simplification Act would fix this problem by establishing a fair and uniform law that would ensure the correct amount of tax is withheld and paid to the States without the undue burden of the current dysfunctional system.

Consistent with current law, H.R. 1864 provides that an employee's earnings are subject to full tax in his or her State of residence. In addition, this bill would only subject employees who perform em-

ployment duties in a nonresident State if they work in that State for more than 30 calendar days.

At a time when more and more Americans find themselves traveling for their jobs, this bill is a common-sense solution that helps workers who are employed in multiple jurisdictions by simplifying their tax reporting requirements.

We are all aware there is a problem, and this bill is the solution. It not only simplifies the system, but makes it fair for people who work in multiple jurisdictions, and it assists businesses as they comply with complex tax laws.

In an economy that is beginning to recover from the devastating recession, this bill makes sense. After 3 years of championing this issue, I appreciate this Subcommittee's interest in this legislation. I would be remiss not to recognize former Representative Chris Cannon of Utah, who was the original proponent of this legislation, and he entrusted it to me. And now I am working with Mr. Coble to get it done.

So I look forward to working with all of you to move the bill through Congress and to the President's desk for his signature.

Thank you, Mr. Chairman, and I yield back.

Mr. COBLE. Thank you, Mr. Johnson.

And we had the distinguished gentleman from South Carolina, Mr. Gowdy, was with us, and I presume he will be back.

Before we hear from our distinguished panel, the gentleman from Tennessee just said to me, he said, "Howard, I hope you can give me these greetings 20 years from now." Twenty years from now, Mr. Cohen, I will probably be in sweet Beulah land, or at least I hope that is where I am.

Mr. COHEN. Mr. Chairman, I hope not, and I doubt it. In the New York Times today, I read about a lady who I wish I would have married. It was one of the mistakes, I have made some mistakes with women before. I should have married this woman. She died at 104 with a half billion dollars. [Laughter.]

Mr. COBLE. Well, maybe I won't be in sweet Beulah land. [Laughter.]

But it is always good to hear that.

Good to have our distinguished panel with us. I will give you a little background about each of them.

Mr. Jeffrey A. Porter is the founder and owner of Porter & Associates, CPAs, a local firm in Huntington, West Virginia, which concentrates in the providing of tax planning and business advisory services for small to medium-sized businesses.

Today, he is testifying on behalf of the American Institute of Certified Public Accountants, a group in which he has been active for over 20 years. He is currently serving as a member of the Tax Executive Committee for a second term.

Mr. Porter is a member of the West Virginia Society of CPAs. He holds a bachelor's degree in business administration from the Marshall University and a master of taxation from the University of Tulsa.

Mr. Patrick Carter currently serves as the director of the Delaware Department of Revenue. His testimony today is on behalf of the Federation of Tax Administrators, a group he currently serves as president. As director, he oversees a staff of 200 who are respon-

sible for the administration and enforcement and collection of the personal and business income taxes for the State of Delaware.

Prior to becoming director, Patrick served as the deputy director of the Delaware Division of Revenue from 1994 to 2001. Prior to his public service, Mr. Carter was a CPA in the private sector. He received his MBA in finance from Indiana University and his bachelor's degree in accounting from the University of Delaware. He is a member of the Delaware Society of CPAs.

Mr. Joseph Crosby is the chief operating officer and senior director of policy at the Council on State Taxation, or COST, here in Washington, D.C. The council is a nonprofit trade association consisting of nearly 600 multi-State corporations engaged in interstate and international business. Its objective is to preserve and promote equitable and nondiscriminatory State and local taxation of multijurisdictional business entities.

Prior to joining COST, Mr. Crosby was the national director of State legislative service for Ernst & Young in Washington, D.C. He has been quoted as an expert in State and local tax policy in several major media outlets. Before attending American University for graduate coursework in economics, Mr. Crosby earned his bachelor's degree in history at the Loyola Marymount University in Los Angeles.

Gentlemen, good to have each of you with us. Good to have those in the audience with us as well.

Mr. Porter, we will start with you. And if you would, gentlemen, on your panel, you will see a panel that will illuminate with a green light. When that green light turns to amber, that tells you that the ice on which you are skating is getting thin, and you will have another minute to go. And if you could wrap up on or about 5 minutes, we would appreciate that.

Mr. Porter, we will start with you.

TESTIMONY OF JEFFREY A. PORTER, OWNER, PORTER & ASSOCIATES, CPAS, HUNTINGTON, WEST VIRGINIA, ON BEHALF OF THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Mr. PORTER. Thank you, Mr. Chairman and Members of the Subcommittee.

We appreciate the opportunity to testify today in support of H.R. 1864, the Mobile Workforce State Income Tax Simplification Act of 2011.

My name is Jeff Porter. I am a sole practitioner in Huntington, West Virginia, with Porter & Associates and currently serve on the Tax Executive Committee of the American Institute of Certified Public Accountants.

At Porter & Associates, we provide accounting and tax services to approximately 100 local businesses and prepare close to 900 individual income tax returns annually. We have clients in a wide range of industries, including contracting, wholesale and retail trade, medical, law, the food industries, and many others. Today, I am pleased to testify on behalf of the AICPA.

The AICPA is a national professional organization of certified public accountants, comprised of approximately 370,000 members. The AICPA members advise clients on Federal, State, and inter-

national tax matters and prepare income tax returns for millions of Americans.

The members of the AICPA also provide services to individuals, tax exempt organizations, small and medium-sized businesses, as well as America's largest businesses.

The AICPA supports H.R. 1864. Businesses, including small businesses and family businesses, that operate interstate are subject to significant regulatory burden with regard to compliance with nonresident State income tax withholding laws. These administrative burdens take existing resources from operational aspects of the business and may require the hiring of additional administrative staff or outside experts in order to meet the demands of compliance.

The business costs could be passed on to customers and clients. But either way, they incur cost to someone in the stream of commerce. Having a uniform national standard for State resident income tax withholding and having a de minimis exemption for the multi-State assessment of State nonresident income tax would significantly mitigate these burdens.

Accounting firms, including small firms, do a great deal of business across State lines. Many clients have facilities in nearby States that require an onsite inspection during the conduct of an audit. Additionally, consulting, tax, and other nonaudit services that CPAs deliver may be provided to clients in other States or to facilities of local clients that are located in other States.

Many small business clients of CPAs have multi-State activities also. In essence, all of these entities—small businesses, accounting firms, and their clients—are affected by nonresident income tax withholding laws.

Forty-three States and the District of Columbia impose a personal income tax on wages, and there are many differing requirements for withholding tax for nonresidents among those States. Some of the States have a de minimis number of days before nonresidents working in that State must have taxes withheld and paid to the State. Others have a de minimis exemption based on the amount of wages earned, either in dollars or as a percent of total income while in the State.

The rest of the States that impose personal income taxes on nonresident income earned in the State only require a work appearance in the State, even if in the presence of the State only for a moment. The issue of tracking and complying with all of these different requirements are further complicated by the reciprocity agreements in many States, usually among adjoining States and that specify they will not require State income tax withholding for residents of other States that have signed the reciprocity agreement.

It is not difficult to understand the complexity that goes into this, and the recordkeeping could be voluminous. The recordkeeping and withholding a State requires can be for as little as a few moments of work in another State.

The research to determine any State's given individual requirement is extensive and time consuming, especially for a small firm or a small business that does not have a great amount of resources.

This research needs to be updated annually, at least to make sure that the State law has not changed.

In addition to uniformity, we maintain there needs to be a de minimis exemption. The AICPA has supported the 60-day limit contained in previous versions of similar legislation but believe that the 30-day limit contained in H.R. 1864 is fair and workable.

The changes that have occurred as our country has gone from local economies to a national economy are huge. Where businesses once tended to be local, they now have a national reach. This has caused the operations of even a small business to move to an interstate basis.

As this Committee moves forward in considering the legislation, there is one amendment that the AICPA would recommend. Once the 30-day threshold is reached, the employee should pay withholding and State income tax in the host State for all wages going forward. Withholding should not be made retroactive for the first 30 days. To do so would be unfair to the employee.

Mr. Chairman, again, thank you for the opportunity to testify in support of H.R. 1864, and I would be happy to answer any questions you or the Members of the Subcommittee may have.

[The prepared statement of Mr. Porter follows:]

American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

WRITTEN TESTIMONY OF JEFFREY A. PORTER, CPA

ON BEHALF OF THE

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
THE UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

H.R. 1864
THE "MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT OF 2011"

MAY 25, 2011

T: 202.737.6600 | F: 202.638.4512 | aicpa.org

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today in support of H.R. 1864, "the Mobile Workforce State Income Tax Simplification Act of 2011". My name is Jeff Porter. I am a sole practitioner at Porter & Associates based in Huntington, WV and currently serve on the Tax Executive Committee of the American Institute of Certified Public Accountants (AICPA). At Porter & Associates, we provide accounting (non-auditing) and tax services to approximately 100 local businesses and prepare close to 900 individual income tax returns annually. We have clients in a wide range of industries, including contracting, wholesale and retail trade, medical, law, food industries, etc. Today, I am pleased to testify on behalf of the AICPA.

The AICPA is the national, professional organization of Certified Public Accountants comprised of approximately 370,000 members. The AICPA members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. The members of the AICPA also provide services to individuals, tax-exempt organizations, small and medium sized businesses as well as America's largest businesses.

The AICPA supports H.R. 1864, "the Mobile Workforce State Income Tax Simplification Act of 2011". Businesses, including small businesses and family businesses that operate interstate, are subject to a significant regulatory burden with regard to compliance with nonresident state income tax withholding laws. These administrative burdens take existing resources from operational aspects of the business and may require the hiring of additional administrative staff or outside experts in order to meet the demands of compliance. These business costs could be passed on to customers and clients, but either way they incur a cost to

someone in the stream of commerce. Having a uniform, national standard for state nonresident income tax withholding and having a de minimis exemption from the multi-state assessment of state nonresident income tax would significantly ameliorate these burdens.

Accounting firms, including small firms, do a great deal of business across state lines. Many clients have facilities in nearby states that require an on-site inspection during the conduct of an audit. Additionally, consulting, tax or other non audit services that CPAs deliver may be provided to clients in other states, or to facilities of local clients that are located in other states. Many small business clients of CPAs also have multi-state activities. In essence, all of these entities (small businesses, accounting firms and their clients) are affected by nonresident income tax withholding laws.

Forty-three states and the District of Columbia impose a personal income tax on wages and partnership income, and there are many different requirements for withholding income tax for nonresidents among those states. Some of these states have a de minimis number of days before nonresidents working in that state must have taxes withheld and paid to that state. Others have a de minimis exemption based on the amount of the wages earned, either in dollars or as a percent of total income, while in the state. The rest of the states that impose personal income taxes on nonresident income earned in the state require only a work appearance in the state, even if present in the state for only a moment. The issue of tracking and complying with all the differing state and local laws is further complicated by the fact that a number of these states have reciprocity agreements, usually with adjoining states, that specify that they will not require state income tax withholding for residents of the other states that have signed the reciprocity pact.

It is not difficult to understand that the recordkeeping, especially if business travel to multiple states occurs, can be voluminous. The recordkeeping and withholding a state requires can be for as little as a few moments of work in another state. The research to determine any given state's individual requirement is expensive and time consuming, especially for a small firm or small business that does not have a great amount of resources. This research needs to be updated at least annually to make sure that the state law has not changed. A small firm or business may choose to engage outside counsel to research the laws of the other states, at an additional cost. Having a uniform national standard would reduce the burden of having to constantly research the tax laws for each state where work is performed or may be performed.

In addition to uniformity, we maintain that there needs to be a de minimis exemption. AICPA has supported the 60 day limit contained in previous versions of similar legislation, but believes that the 30 day limit contained in H.R. 1864 is fair and workable. The changes that have occurred as our country has gone from local economies to a national economy are huge. Where businesses once tended to be local, they now have a national reach. This has caused the operations of even small businesses to move to an interstate basis. Because of the interstate operations of these companies, many providers of services to these companies, such as CPAs, find that they are also operating, to some extent, on an interstate basis. The ease of communication through the internet, along with the ease of travel and the ability to conduct business far from home is not the issue it once was. Local taxation issues have now become national in scope, and these burdens must be eased in order to promote interstate commerce and ensure it runs efficiently.

Furthermore, many smaller firms and businesses use third-party payroll services rather than performing that function in-house. A number of third-party payroll service providers cannot handle multi-state reporting. For example, third party payroll service providers generally report on a pay period basis (e.g., twice per month, bi-weekly) as opposed to a daily basis, which can be a necessity when interstate work is performed. These reporting issues require employers to track and manually adjust/override the reporting and withholding to comply with various state requirements. The alternative is to pay for a much more expensive payroll service. H.R. 1864 would provide significant relief from these burdens thereby allowing employers and firms to focus on job creation and business operations.

The 30 day limit in the bill ensures that the interstate work for which an exemption from withholding is granted does not become a means of avoiding being taxed or shifting income tax liability to a state with a lower rate. Instead, it ensures that the primary place(s) of business for an employee are where that employee pays state income taxes.

As this Committee moves forward in considering this legislation, there is one amendment to the bill that the AICPA would recommend. Once the 30 day threshold is reached, the employee should pay withholding and state income taxes in the host state for all wages earned going forward. The withholding should not be made retroactive for the first 30 days. To do so would be unfair to the employee. If the reach is retroactive, then on the 31st day of working in the other state, the employee would owe withholding to that state for the 30 day period. This could be a substantial amount, which could cause the employee to be liable for underpayment penalties. It would be unfair to require the employee to pay 30 days of withholding at once, especially where the employee is a resident of one of the other states that imposes a state income

tax. In that situation, the employee would have already had amounts withheld with respect to the home state and would now have to pay withholding twice. A refund from the home state would not be received until tax returns are filed and refunds paid. Also, in states that do not permit a credit for taxes paid to other states, no credit or refund at all would be received and the double tax would stand. This could cause cash flow challenges for employees should they find themselves in a high tax rate jurisdiction.

Again, Mr. Chairman thank you for the opportunity to testify in support of H.R. 1864, and I would be happy to answer any questions you and the Members of the Subcommittee may have.

Mr. COBLE. Thank you, Mr. Porter.
Mr. Carter, you are recognized for 5 minutes.

TESTIMONY OF PATRICK T. CARTER, DIRECTOR, DELAWARE DIVISION OF REVENUE, WILMINGTON, DELAWARE, ON BEHALF OF THE FEDERATION OF TAX ADMINISTRATORS

Mr. CARTER. Chairman Coble, Vice Chairman Gowdy, Ranking Member Cohen, Members of the Subcommittee, thank you for the opportunity to address the Subcommittee on H.R. 1864.

I am Patrick Carter, president of the Federation of Tax Administrators. The FTA is an association of the principal tax and revenue collection agencies in each of the 50 States, the District of Columbia, and New York City. We have worked with the Committee staff, industry representatives on this legislation for several years.

We had requested through an FTA resolution that since New York State is the most significantly affected State and since it is undertaking review of the issue that Federal legislation should not proceed until proponents of H.R. 1864 have worked with New York State officials to resolve the issue at the State level. Further, Congress should also take account of the constructive action by other States on this issue before proceeding with legislation.

We regret that except for a reduction in the days threshold for determining employees' tax withholding responsibility from 60 to 30 days, few of these changes we suggested have been made to the legislation before you. As a result, we believe this bill offers avoidance opportunities and makes normal tax administration of this area virtually impossible.

We must oppose the legislation as it is currently written. If Congress intends to pursue legislation in this area, the Federation of Tax Administrators believes the legislation should be revised as follows.

First, the recordkeeping requirements should be improved. The proposed recordkeeping requirements absolve employers of virtually any obligation to use information that they have unless there is fraud in using the employees' records. State audits will have to be done on each employee to determine if withholdings should have taken place. This scheme cannot effectively be audited or enforced.

The fraud standard should be eliminated, and the employer should be allowed to rely on employee's estimate of time in a State, unless the employer has actual knowledge that the employee's estimate is in error. If an employer maintains records on the location of an employee, those records should be used to determine whether an employee has a State income tax withholding and information return obligation.

On the 30-day rule for establishing tax withholding requirement, it is certainly more than is required to deal with the compliance and burden issues that the bill is intended to address. For example, it is certainly well beyond any level that is necessary to deal with individuals who travel regularly as part of their jobs. For example, attorneys with litigation, training personnel, meeting organizers, as well as government affairs and sales personnel.

We believe the excessive nature of the 30-day rule contributes to the substantial revenue impact that the bill has on certain States, particularly in New York State because of the nature of its economy and its role as an international center in finance and business.

New York State has estimated that this bill could potentially cost them between $80 million and $100 million.

We suggest that it be reduced after a consultation with States concerned with the revenue effect of the rule. The FTA believes that if the legislation is enacted in this area, the de minimis withholding threshold should have an income component in addition to the time component.

State tax obligations would be triggered if the total wages and remuneration paid to an employee for services in a State exceeded a specified amount of income or if the employee exceeded a certain number of days, as is currently proposed. This is similar to the approach used in the Federal income tax system to determine the taxability of income paid on a nonresident alien.

H.R. 1864 defines "day" as a preponderance of the employee's employment duties in such State or locality for such day. We believe this is too vague for administrative purposes. We recommend that this be changed to substitute "all or any part of a day in which the employee is present and performs services in that State."

Furthermore, H.R. 1864 provides no guidance and will likely disrupt established State policies on an increasingly frequent form of compensation, stock options, or other compensation paid in 1 year for services performed in an earlier year. We recommend that the legislation include a provision that allows States to allocate option income earned by a nonresident to a State based on the proportion of time worked in the State from the time the option is granted to the time it is exercised.

The bill only excludes certain public figures and persons of prominence from the coverage of the bill. There are other types of individuals that are paid on a per-event basis. We recommend instead that the bill be amended simply to provide that persons paid on a per-event basis are not to be subject to the terms of the bill. This would avoid litigation and reduce the revenue impact of the legislation.

Mr. Chairman, New York State is the State that is most negatively impacted by this bill. However, today, I had a conversation with the commissioner of the New York State Tax Department, and he is amenable with New York State to work with the Federation of Tax Administrators and with private industry to work toward a compromise on this bill.

That concludes my remarks on this legislation. We continue to be interested in working with the Subcommittee and concerned States to develop a mutually accepted proposal.

Thank you.

[The prepared statement of Mr. Carter follows:]

Statement of
Patrick T. Carter
President
Federation of Tax Administrators

Before the

Subcommittee on Courts, Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives

H.R. 1864
Mobile Workforce State Income Tax Fairness and Simplification Act of 2011
May 25, 2011

Introduction

Chairman Coble, Vice Chairman Gowdy, Ranking Member Cohen and Members of the Subcommittee thank you for the opportunity to address the Subcommittee on H.R. 1864. I am Patrick Carter, President of The Federation of Tax Administrators (FTA). FTA is an association of the principal tax and revenue collecting agencies in each of the 50 states, the District of Columbia, and New York City. Our purpose is to improve the techniques and standards of tax administration through a program of research, information exchange, training, and representing the interests of state tax administrators before the Congress and Federal executive branch.

Summary

FTA has worked on this legislation with the Committee's staff and industry representatives for several years now and we regret that, except for a reduction in the days threshold, none of the changes we suggested to the last version of the bill have been included in this version. As a result we must oppose enactment of H.R. 1864. As drafted, we believe this bill invites tax avoidance and makes normal tax administration of this area virtually impossible. The bill is an unwarranted intrusion into legitimate state tax authority and sovereignty.

If Congress moves into this area, it should balance several interests. We have developed criteria for evaluating legislation in this specific area. Any resolution of the issue should, at a minimum, meet the following criteria:

a. The action should be clearly limited to wages and related remuneration earned by nonresident employees. The legislation must also be clear that it is not intended to impair the ability of states and localities to tax non-wage income earned from the conduct of other economic activities in the taxing jurisdiction.
b. The action should provide that a state or locality may impose income tax liability on a withholding obligation with respect to the wage and related remuneration of a nonresident if the nonresident is present and performing services exceeding a de minimis threshold in a calendar year.
c. Alternatively, the threshold could be formulated as limiting state and local income taxation (and withholding) to those nonresidents present and performing services in the jurisdiction whose earnings exceed a de minimis threshold in wages and related remuneration in the prior year.
d. The action should provide that all persons paid on a "per event basis" are excluded from the coverage of the bill.
e. The action should provide for the allocation of a day to a nonresident jurisdiction when services are performed in the resident jurisdiction and another jurisdiction in a single day.
f. The action should cover wages and remuneration earned within a jurisdiction in a calendar year so as to not disrupt taxation of any deferred amounts. It should not, however, impair the ability of states and localities to tax income arising from the conduct of other economic activities in the taxing jurisdiction.
g. The effective date of any action should be delayed until the beginning of the second calendar year following enactment to allow sufficient time for implementation by state and local governments and affected employers.

The criteria above should not be interpreted to imply that FTA considers that a physical presence standard is in any way an appropriate standard for establishing jurisdiction to tax in other contexts, particularly for the imposition of business activity taxes on entities doing business

in a state. FTA is firmly opposed to Federal legislation that would establish a physical presence nexus standard for the imposition of business activity taxes.

Concerns with H.R. 1864

If Congress intends to pursue legislation in this area FTA believes the legislation should be revised as follows.

Records Used in Determining Withholding Obligation. H.R. 1864 provides that for purposes of determining an employer's withholding obligations, an employer may rely on an employee's determination of time in a state unless the employer has "actual knowledge of fraud by the employee..." It further provides that an employer is not required to use records regarding the location of an employee that it may have unless it maintains a "time and attendance system" that "contemporaneous[ly] records the work location of the employee for every day worked and the employer uses this data to allocate the employee's wages between all taxing jurisdictions in which the employee performs duties." These provisions, taken together, appear to be designed to absolve employers of virtually any obligation to use information that they have at their disposal in determining whether an employee is subject to a withholding requirement (and consequently a tax liability) in a state. Instead, they let the employer rely solely on an employee's estimate of the time he or she may have performed services in a state. Relying on employee records makes it virtually impossible to audit an employer's withholding obligation. Audits must be done on each employee to determine if withholding should have taken place.

FTA recommends two changes in this area. First, the fraud standard in Section 2(c)(1)(A) should be eliminated, and the employer should be allowed to rely on an employee's estimate of time in a state unless the employer has "actual knowledge" that the employee's estimate is in error. Fraud is an exceedingly high standard to prove, and the purpose here is to determine if an employer has a withholding obligation, not whether there is some intent to evade taxes. Second, as to the "time and attendance system," we find the language to be overly narrow and protective of the employer. We recommend that Sections 2(c)(2) and 2(c)(3) be replaced by a requirement that if an employer in the normal course of the business maintains records that record the

location of an employee, such records should be used to determine whether an employer has a state income tax withholding and information return obligation. If the records are maintained and considered sufficiently accurate for other business purposes, the records should be used for purposes of determining the applicability of state tax withholding obligations.

30-Day Rule. Beyond the policy concern of intruding into state authority, the dominant concern of states is the 30-day rule contained in H.R. 1864. It will effectively convert state income tax systems to residency-based tax systems and goes well beyond what is necessary to deal with the burden and compliance issues present in the current system. It will allow an individual to work in a jurisdiction for over 12.5 percent of a work year and be absolved of any liability to the state in which he/she worked. This is certainly more than is required to deal with the compliance and burden issues that the bill was intended to address. It will effectively limit nonresident taxation to those that work permanently in another state or are assigned to a state on a continuing basis; it is certainly well beyond any level that is necessary to deal with individuals who travel regularly as part of their jobs e.g., attorneys with litigation, training personnel, meeting organizers, as well as government affairs and sales personnel.

It is the excessive nature of the 30-day rule that contributes to the substantial revenue impact that the bill has on certain states, particularly New York State because of the nature of its economy and its role as an international center of finance and business. While we would not argue that accounting for minimal amounts of time in a jurisdiction is always practical, the proposed 30-day rule is over-reaching. It is certainly more than is necessary to deal with the burdens employers might face.

Dollar-denominated Threshold. FTA believes that if legislation is enacted in this area, the de minimis threshold should also have an income component in addition to a time component. That is, state tax obligations would be triggered if the total of wages and remuneration paid to an employee for services in a state exceeded a specified amount of income or if the employee exceeded a certain number of days in the state. This is similar to the approach used in the U.S. income tax system to determine the taxability of income paid to a nonresident

alien.[1] As noted, H.R. 1864 exposes some states to significant revenue shifts and disruptions based on the preliminary estimating work that has been done. The addition of a dollar-denominated threshold will reduce the exposure of states to revenue disruptions. In our estimation, it can be done in a manner that does not impose undue burdens on employers or employees.

FTA recommends that the de minimis formula should be "bifurcated" and formulated as follows: (a) An employer would have a withholding obligation only if the employee is a resident of the state or is present in the state in excess of some specified number of days; and (b) an employee should be subject to a state's income tax if she/he: (1) is a resident of the state; (2) exceeds the withholding threshold denominated in terms of time; or (3) has income in excess of some dollar threshold in a state.

Such a construct would provide employers with the certainty and simplification they require to efficiently handle their withholding obligations. At the same time, it provides states with protection against substantial disruptions to their revenue flows. Concern has been expressed that this approach could leave employees in a situation where they would have a tax liability without any withholding having occurred. This, of course, is no different than the current system, and we believe that if the threshold is properly constructed, it is a situation that would affect relatively few employees that should, in conjunction with their employers, be in a position to manage their affairs to avoid the situation.[2] In our estimation, the reduction in the exposure of state revenue systems requires adoption of this approach if Congress intends to pursue legislation in this area.

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[1]Section 861(a)(3) of the Internal Revenue Code provides that compensation for labor or personal services performed in the U.S. is not be deemed to be income from sources within the U.S. if (A) the labor or services are

[2] For example purposes only, consider if the bill imposed a threshold of 20 days in a state or $20,000 in income allocable to a state. In such a case, an employee would have to earn in excess of $260,000 per year in order to exceed the $20,000 threshold (gross income before any deductions, exemptions, etc.) without exceeding the 20 days threshold (based on 260 working days per year.) Employees in this income range should reasonably be able to assess the states in which they are likely to exceed such a threshold in a given year and make arrangements with their employer for withholding if he/she so desires.

Definition of "Day." Section 2(d)(1) of H.R. 1864 defines "day" as any day when the employee is physically present in the state or locality and performs "a preponderance of the employee's employment duties in such State or locality for such day." We would recommend that this be changed to substitute "all or any part of a day in which the employee is present and performs services in the state."

As now written, this provision will do anything but bring clarity and simplification to the determination of when an employee may be subject to tax and when an employer may be subject to withholding. Instead of providing a bright line, it asks employers and employees to make a determination about the proportion of their duties (an undefined term) that were performed in the state. "Duties" could be interpreted to mean specifically assigned obligations or something mandated by an employer, rather than perhaps all the services performed by an employee. Further, how is a "preponderance" to be determined – by time, value of the duty to the employer or some other measure? If it is difficult to determine where an employee is on any given day (as proponents of the bill have argued), it is immeasurably harder to have consistent documentation on where an employee performed a majority of his/her duties for the day. We believe this provision, besides being unclear, could lead to manipulation and gaming the system.

Converting the standard to "all or any part of a day in which the employee is present and performs services in the state" will provide clarity in determining when the withholding and liability thresholds have been met. These are easily understood and commonly used terms. The Committee should also note that for purposes of determining when a nonresident alien being paid by a foreign corporation is subject to U.S. income tax, one of the determinations is how many days the individual is present in the U.S., and "day" is defined as "any part of a day" for Federal income tax purposes. Finally, in evaluating this recommendation, the Committee should keep in mind that the definition of "day" affects only whether the withholding/liability threshold is met and not the amount of any liability.

Compensation Paid Over Multiple Years/Stock Options. H.R. 1864 provides no guidance and will likely disrupt established state policies on an increasingly frequent form of compensation – stock options or other compensation paid in one year for services performed in

an earlier year. Most states have developed rules for this compensation that would be affected by the bill. It is not uncommon for states to allocate option income earned by a nonresident to a state based on the proportion of time worked in the state from the time the option is granted to the time it is exercised (i.e., the stock is purchased at the price offered in the grant).[3] (For federal tax purposes, income earned during this period is treated as taxable compensation and not capital gains income.) Under H.R. 1864, it could be argued that if the individual does not exceed the 30-day threshold in the year the option is exercised, a state may not be able to tax the portion of the income earned during that period even though it is normally treated as taxable compensation and the individual may have exceeded the threshold during the years from grant to exercise. In other words, by imposing an arbitrary (and excessive) days-based threshold on when a taxpayer is subject to tax in a state, H.R. 1864 will disrupt established state tax policies that are based on the accepted source tax principle and are designed to deal with a relatively complex, but increasingly common, form of compensation. Disrupting practices in this area has the potential to exacerbate the revenue loss considerably. Including a dollar-denominated threshold for when a tax liability is incurred by an employee within a state would also help address this problem and reduce the disruption to state revenues.

Certain Public Figures. The bill is drafted so as not to apply to certain types of individuals that are paid on a "per event" basis because such individuals know where they are and how much was earned for the event. We believe, however, that the term "certain public figures" and "persons of prominence" are rather imprecise and could lead to litigation, etc. We recommend instead that the bill be amended simply to provide that "persons paid on a per event basis" are not to be subject to the terms of the bill.

"Cliff" Effect. H.R. 1864 (Section 2(b)) provides that if an employee crosses the 30-day threshold, withholding shall commence from the first day the employee performed services in the state. That is, if an employee crosses the 30-day threshold in November, the December wage payments to the individual would have to reflect withholding for all 30-plus days. This seems to us impractical and could work a hardship on the employee. Importantly, this is really a reflection

[3] See Jack Trachtenberg and Paul R. Comeau, "State Taxation of Stock Options," Presentation to FTA Annual Meeting, Chicago, Illinois, June 2007.

of the excessive nature of the 30-day requirement. A significant reduction in the 30-day standard will minimize this problem for employees and reduce the fiscal impact on states.

Conclusion

Maintenance of a federal system in which states have the authority to design their own tax systems will necessarily impose higher compliance burdens on individuals and their employers than a unitary system with a single tax regime. State tax administrators are not unmindful of the need to consider these compliance burdens and to balance them against the objectives of maintaining state tax sovereignty and not disrupting revenue flows. Tax administrators are committed to exploring options to address the burden of the current withholding and tax liability rules for persons temporarily employed in a state.

FTA believes that H.R. 1864 as introduced does not appropriately balance the interests in this debate. It goes well beyond what is necessary to address legitimate issues of certainty, simplification and compliance and does real harm to state tax systems. To a considerable degree, the harm and exposure to state tax systems is caused by the legislations inadequate record keeping provisions, the excessive 30-day threshold contained in the bill, and the lack of an income-denominated component to the threshold for determining when individuals are liable for taxes in a state in which they have worked temporarily. We look forward to working with the Committee to address these and the other issues we have outlined should you so desire.

Thank you Mr. Chairman. That concludes my testimony.

Mr. COBLE. Thank you, Mr. Carter.
Mr. Crosby?

TESTIMONY OF JOSEPH R. CROSBY, CHIEF OPERATING OFFICER AND SENIOR DIRECTOR OF POLICY, COUNCIL ON STATE TAXATION, WASHINGTON, DC

Mr. CROSBY. Chairman Coble, Ranking Member Cohen, and Members of the Subcommittee, my name is Joe Crosby. I am chief operating officer and senior director of policy with the Council on State Taxation, which is more commonly known as COST.

COST is a trade association based here in D.C. that represents nearly 600 of the Nation's largest employers on business tax issues.

Mr. Chairman, I would like to begin by thanking you and Congressman Johnson for introducing H.R. 1864. This is an important piece of legislation, and we appreciate your support.

I would also like to thank the other Subcommittee Members who have already agreed to cosponsor and those who I hope will soon cosponsor the legislation.

I appreciate the opportunity to share with you COST views on this issue. Mr. Chairman, you and the Ranking Member Cohen and Mr. Johnson did an excellent job in your introductory remarks describing the problem and what the legislation does. So being from Maine and understanding what thin ice means, I will dispense with a lengthy description of what the bill does in the interest of time.

What I would like to say, simply to add to a couple of things that were said earlier, is that this is an issue that impacts all employers, not just businesses. It impacts businesses large and small. It also impacts charities and nonprofits and even Government agencies.

The legislation is not a business legislation, per se, but legislation that helps all employees that travel for work and all of their employers, and I think that is an important thing to keep in mind.

The other thing that I think is helpful to understand, and Mr. Carter's testimony alluded to this, this is an issue that is understood nearly universally to be a problem. The Federation of Tax Administrators in prior testimony before this Subcommittee said, "Complying with the current system is, indeed, difficult and probably impractical."

And the executive director of the Multi-State Tax Commission said, "There is widespread noncompliance" as a result of the complex laws that are currently in place.

So I don't really think there is a whole lot of question with regard to whether this is an issue that needs to be addressed. Nor is there really any question about the substance of what the solution should be. The framework that is set forth in H.R. 1864, a national threshold that protects employees that travel on temporary work assignments is, indeed, the framework that has been adopted by the Multi-State Tax Commission in their own efforts on this issue.

The Multi-State Tax Commission's agreement, modeled after H.R. 1864, unfortunately, will not solve the problem, and Federal action is needed. Model State legislation in the area of taxation has never been universally adopted in the States. We have never had one experience in this country of the States uniformly adopting any tax simplification proposal.

And so, while I would like to think that something like that could happen, it faces a fundamental political challenge. And that

is for especially on this issue, for a State legislator to make this issue a high priority would require him or her to put the interests of nonresidents above his or her own constituents.

The legislation, as it might be adopted in any particular State, benefits exclusively nonresidents. And so, it is difficult for State legislators, as you know better than I, to put forward an issue that is going to help primarily folks who are not their constituents.

And so, adoption of a model State statute by one State or even a handful of States won't solve the problem. For employees who travel and their employers, there will be no meaningful simplification unless and until Congress enacts legislation.

And Mr. Chairman, that is really the question that we confront here is whether this is something best addressed separately by the States or addressed by this body. And I think the weight of the evidence is clear that it is something that must be adopted here because of the practical political obstacles, as well as the historic inability for States to solve these sorts of problems.

As you mentioned in your introductory remarks, Mr. Chairman, the mobility of our workforce is one of our greatest strengths as a Nation, and that flexibility is being impinged by the current laws and regulations. Unless H.R. 1864 is passed, that flexibility will be hindered and will continue to form a problem.

Thus, I respectfully request the Subcommittee's speedy adoption of H.R. 1864. I appreciate the time and would be happy to answer any questions you have.

Thank you.

[The prepared statement of Mr. Crosby follows:]

Statement of
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Before the

U.S. House of Represeutatives
Committee ou the Judiciary
Subcommittee on Courts, Commercial and Administrative Law

Hearing on H.R. 1864
The Mobile Workforce State Income Tax Simplification Act of 2011

The Honorable Howard Coble, Chair

May 25, 2011

Chairman Coble, Ranking Member Cohen, and Members of the Subcommittee, I am Joe Crosby, COO & Senior Director, Policy for the Council On State Taxation, which is more commonly known as COST.

COST is a non-profit trade association consisting of nearly 600 multistate corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and non-discriminatory state and local taxation of multi-jurisdictional business enterprises.

I would first like to thank Chairman Coble and Congressman Johnson for introducing H.R. 1864, The Mobile Workforce and State Income Tax Simplification Act of 2011. I appreciate the opportunity to share with you COST's views on the important issues this legislation addresses: personal income taxes imposed on employees who travel away from their resident states for temporary work periods and the associated tax withholding obligations of their employers.

Widespread Problem

The problem addressed by H.R. 1864 can be simply stated: every business day hundreds of thousands of employees across the country are sent by their employers to work in nonresident states. The vast majority of these trips are temporary in nature, whereby the employee conducts business in the nonresident state for a short period of time and then returns to his/her resident state.

States currently have varying and inconsistent standards regarding the requirements:

- for *employees* to file personal income tax returns when traveling to a nonresident state for temporary work periods; and,
- for *employers* to withhold income tax on employees who travel outside of their state of residence for temporary work periods.

Employees who travel outside of their state of residence for business purposes are subject to onerous administrative burdens because, in addition to filing federal and resident

state income tax returns, they may also be legally required to file an income tax return in every other state into which they travel, *even if they are there for only one day*.

The patchwork of inconsistent state laws and rules is shown by the map and chart attached as Exhibit A to my testimony. The challenges imposed upon employees to understand these widely divergent rules, track down the appropriate nonresident state forms and actually comply with this multiplicity of state tax rules is nearly insurmountable.

So too, employers are extremely hard pressed to comply with these varying and disparate rules and provide the appropriate nonresident state withholding. It is important to note that this tax compliance issue affects all employers whose employees travel for work: large and small businesses, charities and other non-profits, and even government agencies.

There is no practical technological solution to this problem. Very few employers, large or small, have the capability to integrate payroll with business operating systems to allow tracking of employees' whereabouts on a daily basis. Employers who have such capability face further challenges in attempting to use such systems to comply with the states' non-resident personal income tax withholding requirements. Employers' compliance with disparate state rules is almost exclusively via manual processes. Because of the current lack of uniformity, the costs of automating such systems would be exorbitant in relation to any compliance gains to the various states.

Simple Solution

The simple answer to this widespread problem is to legislate a federal threshold period of thirty days for temporary employee work assignments to nonresident states. Employees working in nonresident states for thirty or fewer days would remain fully taxable in their resident state for all earnings (to the extent the resident state chooses to have a state personal income tax system). The vast majority of employees who travel outside their resident state for employment purposes would fit within this threshold period. To the extent the employee has duties in the nonresident state for an extended period exceeding the thirty day annual threshold, then the employer would have adequate information to provide accurate withholding of wages to the nonresident state, and the employee would be on notice

that the state filing rules must be complied with. This uniform rule would greatly ease compliance for all employers subject to state withholding rules and would provide much greater certainty for employees in fulfilling their personal nonresident state filing obligations.

Uniform Rules are Needed Now

While states' laws addressing nonresident withholding and personal income tax liability have been on the books for many years, resolution of this issue has reached a critical stage for corporations for a number of reasons, most notably the enactment of the Sarbanes Oxley Act of 2002. Under Section 404 of the Act, company management is required to certify that processes and procedures are in place to comply with applicable laws and regulations, including state tax rules. This rule, along with a commensurate desire by corporations to be fully compliant with all rules and requirements as part of corporate governance responsibilities, has increased the interest of business in desiring uniformity and simplicity in matters of nonresident state income and withholding laws.

Furthermore, employers have a significant interest in ensuring that employees comply with all state law taxation requirements. COST members are acutely aware of the burdens placed on their employees who travel outside their resident states for business. They have expressed a strong desire to meet their responsibilities as employers by assuring that their employees comply with these burdens. Unfortunately, the current patchwork of state rules makes it extremely difficult to comply fully.

A Federal Standard is the Only Solution

In a limited manner, some states have resolved the issue of nonresident personal income on a regional basis, typically with adjoining states through bilateral reciprocal agreements. These bilateral reciprocal agreements are helpful in discrete regional situations, but fall well short of solving a problem that is nationwide in scope.

Conceptually, there is no barrier to the states agreeing, in concert, to adopt a single, national standard governing personal income taxes imposed on nonresidents working in a

state for temporary work periods. In fact, the Multistate Tax Commission (MTC) may soon approve a model statute that theoretically could provide the basis for such a national standard. Unfortunately, in the area of taxation, there are several historically insurmountable hurdles to achieving a simple system through voluntary state action.

Model state legislation such as that under consideration by the MTC faces a fundamental political challenge in every state in which it might be considered: by definition, the legislation, when considered in any one state, does not benefit those employees living in the state or their employers unless and until another state enacts the same law. Even then, the model statute benefits only those employees who reside in a state that has enacted the law and who are traveling to a state that has also enacted the same law (the MTC model statute is based on reciprocity). Thus, for employees who travel and their employers, there could be no simplification unless and until all states imposing a personal income tax have adopted the model statute. Furthermore, those states would have to adopt the model statute uniformly; in other words, state-to-state deviations from the model statute would significantly diminish, or completely eliminate, the benefits of the model statute. Finally, even if it were possible to achieve voluntary state action, it would require many years, and perhaps decades, to accomplish. Despite initiating discussions with representatives for state tax administrators more than five years ago, and despite a "fast track" process to develop model legislation, the model legislation has still not been approved.

There is not a single example in the history of state taxation in this country to suggest that voluntary adoption by all the states of a model tax statute to promote simplification is achievable.[1] As a result, we believe the only way to secure a nationwide resolution of the issues is to provide a uniform and simple set of rules established under federal guidelines, such as that set forth in H.R. 1864.

[1] There are examples of tax simplification resulting from federal intervention in areas where discussion among the states was already underway. The taxation of motor fuel used by interstate motor carriers is one such example. The International Fuel Tax Agreement (IFTA) began as a voluntary state effort in 1983, and in 1984 federal legislation authorized the formation of a working group that ultimately drafted a model statute to cover fuel taxes on interstate motor carriers. By the end of 1990, eight years after the effort began, sixteen states had joined the IFTA. Uniformity, however, was only achieved after the adoption of the Intermodal Surface Transportation Efficiency Act in 1991, where Congress mandated that states join the IFTA by September 30, 1996 or risk loss of certain transportation revenues.

H.R. 1864 – Explanation of Provisions

First and foremost, H.R. 1864 provides that all wages and other remuneration paid to an employee would be subject to the income tax laws in the state of the employee's residence. In addition, under the legislation wages and other remuneration are also subject to tax in the state in which the employee is present performing duties for more than thirty days in a calendar year, and employers would be subject to commensurate withholding requirements of that nonresident state. The thirty day threshold does not apply to professional athletes, professional entertainers, or certain public figures who, because of their national prominence, are paid on a per-event basis to give speeches or similar presentations. For example, a professional football player would be subject to nonresident state personal income taxes for performance in an athletic event. As another example, a well-known author who is an employee of a speakers' organization would be subject to nonresident state income taxes for making a presentation in a state and receiving compensation based on that event. In both of these cases, their respective employers would be subject to the nonresident state withholding requirements.

An employer may rely on an employee's determination of the time spent in a nonresident state absent knowledge of employee fraud or collusion between the employer and employee. If an employer, however, at its discretion, maintains a time and attendance system tracking where employees perform their services, such system must be used instead of the employee's determination.

An employee will be considered present performing duties in a state if the employee performs the preponderance of his or her duties in such state for such day. If an employee performs material employment duties in only the employee's resident state and one nonresident state during a single day, such employee will be considered to have performed the preponderance of his or her duties in the nonresident state for such day.

The terms "employee" and "wages or other remuneration" are defined by the state in which the employment duties are performed. These references to state law protect the prerogatives of the state, as the overall intention of the legislation is to make the least incursion practicable in current state withholding and personal income tax rules and regulations.

Impact on State Taxes

All states that levy a personal income tax provide residents with a credit for nonresident personal income taxes paid to other states. Thus, at a macro level, the difference between the loss of tax revenue that is currently received by a state from nonresidents is generally balanced by an increase in tax revenue resulting from fewer credits provided to residents for taxes paid to other states. I have included a detailed explanation of the impact on state tax receipts and a state-by-state analysis as prepared by Ernst & Young, LLP for identical legislation considered in the 111th Congress as Exhibit B to my testimony. As noted in the fiscal impact analysis, forty-four states either gain a small amount of revenue or have net reductions in revenue of one hundredth of one percent or less (0.01%). The impact of the legislation results in a redistribution of income taxes between resident and nonresident states with only a very slight reduction in total income taxes collected by the states. For all fifty states and the District of Columbia combined, the net change is a reduction in revenue of a mere one hundredth of one percent (.01%), which accrues as a net nationwide reduction of $42 million in overall personal income taxes.

Why such a small net reduction in overall personal income taxes? Under H.R. 1864, employees whose work responsibilities in nonresident states are under the thirty day threshold period would experience a reduction in personal income taxes only under the following two circumstances: (1) to the extent the employee's resident state imposes tax at a lower rate than the nonresident state or (2) when a nonresident state tax is imposed on an employee whose resident state does not also impose a personal income tax.

Conclusion

H.R. 1864 addresses a problem that is universally recognized by the state tax community. According to the Federation of Tax Administrators, "Complying with the current system is...indeed difficult and probably impractical."[2] Indeed, one prominent state tax official candidly acknowledged that even he does not comply with current law on his regular

[2] Statement of Harley Duncan before the House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, November 1, 2007.

travels away from his home state, concluding that "there is widespread noncompliance" currently.[3]

The proposed solution articulated in H.R. 1864—a thirty day threshold period and associated operating rules that address both employee liability and employer withholding—is widely accepted as the appropriate framework to address the problem. In fact, the MTC's draft model statute is based on the predecessor to H.R. 1864.[4]

The only question we confront here is whether the problem is best addressed separately by each individual state or the Congress. I greatly respect my colleagues in state government and the work that they do, and I would like to think that they, working in concert, could solve this problem. Unfortunately, the practical political obstacles to achieving such a solution, and the historical lack of any evidence that such a solution is possible, leads me to conclude that state model legislation will not solve the problem.

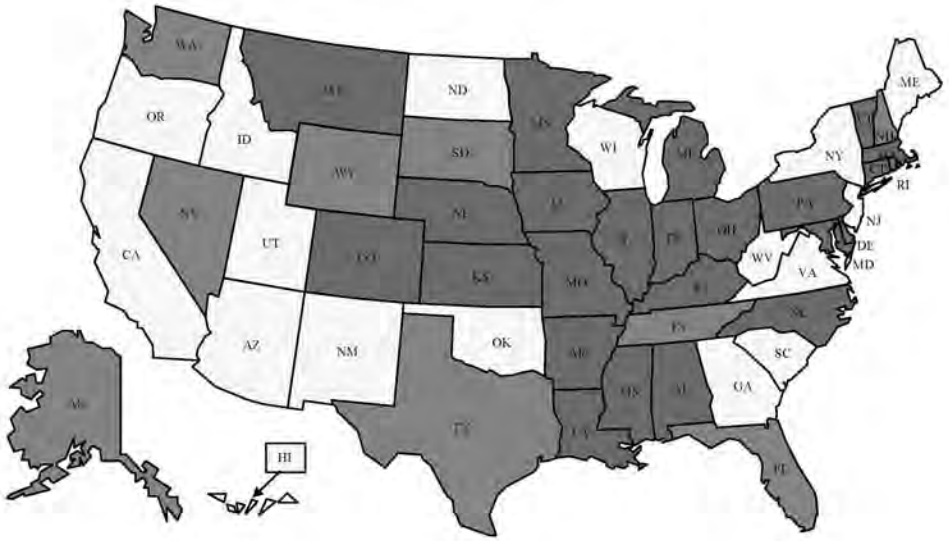
Employees who travel outside of their home states for temporary work periods, and their employers, will remain subject to today's onerous burdens without Congressional action. Thus, I respectfully request your support for the speedy adoption of H.R. 1864.

I would be pleased to answer any questions you may have. Thank you.

[3] White, Nicola M., "Many Agreed on Need for Mobile Workforce Tax Uniformity, but Will it Happen?" *State Tax Notes*, August 2, 2010, p. 271.
[4] Multistate Tax Commission: http://www.mtc.gov/Uniformity.aspx?id=4622.

Appendix A

Nonresident Personal Income Tax Withholding



Key

- Nonresident employees subject to tax withholding on *first day* of travel
- Nonresident employees subject to tax withholding after reaching threshold (see Appendix A for details)
- No general personal income tax (or, in the case of Washington, DC, no tax on nonresidents)

— Appendix A —

Withholding Thresholds—More than half of the states that have a personal income tax require employers to withhold tax from a nonresident employee's wages beginning with the *first day* the nonresident employee travels to the state for business purposes. Some personal income tax states (identified on the map with a yellow background) provide for a threshold before requiring tax withholding for nonresident employees. The following chart details these withholding thresholds. Please note that this chart covers *withholding* only; many of these states have a different (and usually lower) standard for imposing tax on nonresidents (*i.e.*, the employee may owe tax even where the employer is not required to withhold tax).

State	No Withholding Required If Nonresident…
Arizona	is in the state for 60 or fewer days in a calendar year
California	earns in-state wages equal to or below "Low Income Exemption Table"
Georgia	is in the state for 23 or fewer days in a calendar year or if less than $5,000 or 5% of total income is attributable to Georgia
Hawaii	is in the state for 60 or fewer days in a calendar year
Idaho	earns in-state wages less than $1,000 in a calendar year
Maine	is in the state for 10 or fewer days in a calendar year
New Jersey	earns in-state wages less than the employee's personal exemption in a calendar year
New Mexico	is in the state for 15 or fewer days in a calendar year
New York	is in the state for 14 or fewer days in a calendar year
North Dakota	is in the state for 20 or fewer days in a calendar year and is a resident of a state that provides similar protections for nonresidents (reciprocal exemption); certain occupations (e.g., professional athletes) not protected
Oklahoma	earns in-state wages less than $300 in a calendar quarter
Oregon	earns in-state wages less than the employee's standard deduction
South Carolina	earns in-state wages less than $800 in a calendar year
Utah	*employer* does business in the state for 60 of fewer days in a calendar year
Virginia	earns in-state wages less than the employee's personal exemptions and standard deduction or, if elected by the employee, the employee's filing threshold
West Virginia	earns in-state wages less than the employee's personal exemptions
Wisconsin	earns in-state wages less than $1,500 in a calendar year

Reciprocal Agreements—In addition to the thresholds shown above, many states have reciprocal agreements with neighboring states that provide that taxes are paid in (and withheld for) the resident state only. For example, a resident of Virginia who works in Maryland is subject to tax only in Virginia. The converse also applies. In most states with reciprocal agreements, a "certificate of nonresidence" must be filed either with the employer or the nonresident state. A full list of state reciprocal agreements is beyond the scope of this document.

March 16, 2009

Estimates of State-by-State Impacts of the
Mobile Workforce State Income Tax Fairness and Simplification Act

This analysis presents state-by-state estimates of the net change in state personal income taxes projected from the impact of the Mobile Workforce State Income Tax Fairness and Simplification Act at fiscal year 2008 levels. The net impact figures for each state include two components: 1) the reduction in income tax collections due to the increase in the number of in-state days (30 days less a state's current-law day threshold) required before a nonresident employee is subject to income taxation, and 2) the increase in tax collections in resident states due to reduced credits on resident income tax returns for taxes paid by the residents to other states where they work and are taxed as nonresidents.

The bill has the following features that are important determinants of the estimated state income tax impacts:

- A nonresident employee, with limited exceptions, performing employment duties in a state for 30 days or less would not be subject to the nonresident state's personal income tax.

- An employee is considered to be performing employment duties within a state for a day if the preponderance of their employment duties for the day are within a state. If employment duties are performed in a nonresident state and a resident state in the same day, the employee is considered to be performing employment duties in the nonresident state for the day.

- The legislation would not be effective until January 1, 2011.

Table 1 provides state-by-state estimates of the change in net personal income taxes (in millions of dollars) due to the proposal. The net change for all states and the District of Columbia (-$42 million) is the sum of the revenue reduction due to reduced taxes paid by nonresident employees and increased taxes paid to resident states due to lower credits. Table 1 also reports the net change as a percent of fiscal year 2008 total state taxes.[1]

Twenty-five states have either an income tax revenue gain or no loss under H.R. 3359; another 22 states have revenue reductions less than 0.02% (two-hundreds of a percent or two-tenths of a mill) of state tax collections. As the table illustrates, the bill redistributes income taxes between resident and nonresident states with only a very slight reduction in total income taxes collected

[1] The estimates were prepared by Ernst & Young LLP based on survey data provided by seventeen states through the Federation of Tax Administrators, as well as state tax collection data for other states from the U.S. Census *Governmental Finances* and state tax collection reports and journey-to-work data from the U.S. Census. More detailed estimates, as well as a description of the estimating methodology, are available upon request. The legislation will not affect local personal income taxes.

Table 1: Estimates of Impact of H.R. 3359, FY 2008		
State	**Net Change as a Percent of Total State Taxes**	**Net Change in Millions of Dollars**
Alabama	0.01%	$0.5
Alaska	0.00%	0.0
Arizona	0.01%	1.3
Arkansas	0.00%	-0.3
California	-0.01%	-6.2
Colorado	-0.02%	-1.5
Connecticut	0.02%	3.1
Delaware	0.08%	2.4
District of Columbia	0.00%	0.2
Florida	0.00%	0.0
Georgia	-0.01%	-1.8
Hawaii	0.00%	0.2
Idaho	0.00%	0.1
Illinois	-0.02%	-7.4
Indiana	0.03%	3.8
Iowa	0.01%	0.9
Kansas	0.00%	0.3
Kentucky	-0.01%	-1.3
Louisiana	-0.02%	-1.7
Maine	0.00%	0.1
Maryland	-0.01%	-1.0
Massachusetts	-0.03%	-6.9
Michigan	-0.01%	-1.8
Minnesota	-0.01%	-2.2
Mississippi	0.01%	0.6
Missouri	0.01%	1.6
Montana	0.00%	-0.1
Nebraska	0.00%	-0.1
Nevada	0.00%	0.0
New Hampshire	0.00%	-0.1
New Jersey	0.09%	26.2
New Mexico	0.00%	0.0
New York	-0.07%	-45.2
North Carolina	-0.01%	-1.6
North Dakota	0.00%	-0.1
Ohio	-0.01%	-1.7
Oklahoma	-0.01%	-0.5
Oregon	-0.04%	-2.7
Pennsylvania	-0.01%	-2.2
Rhode Island	0.12%	3.3
South Carolina	0.03%	2.3
South Dakota	0.00%	0.0
Tennessee	0.00%	-0.1
Texas	0.00%	0.0
Utah	-0.01%	-0.7
Vermont	0.01%	0.3
Virginia	-0.01%	-1.3
Washington	0.00%	0.0
West Virginia	-0.01%	-0.4
Wisconsin	0.00%	-0.4
Wyoming	0.00%	0.0
Total for All States	**-0.01%**	**-$42.0**

by the states. For all states combined, the net change in total taxes is only a reduction of -.01% or $42 million which accrues as a reduction in overall personal income taxes.

It is important to note that the proposed law change would not apply until January 1, 2011. As shown in Table 2, there would be no fiscal impact on states for fiscal years 2009 and 2010, and only a partial-year impact (less than 50% of the annual impact) for fiscal year 2011 that, for most states, ends July 31, 2011. The full fiscal year impact will first occur in fiscal year 2012.

Table 2
Fiscal Year Impact of H.R. 3359
FY 2008 Levels of Taxes

Fiscal Year	Impact on State Income Taxes
2009	no impact
2010	no impact
2011	less than $21 million
2012	$42 million

Table 3 compares the net impact estimates for the Mobile Workforce State Income Tax Fairness and Simplification Act considered by the 110th Congress and for the bill as prepared for introduction in the 111th Congress. As originally introduced, the bill included a 60-day threshold for nonresident taxation. As shown in the table, this would have reduced state net personal income tax collections by $102 million at fiscal year 2008 collection levels. The second line of the table shows that the reduction of the threshold to 30 days lowers the revenue impact by $55.6 million to a net reduction of $46.5 million. Adding the more expansive definition of a "day" worked in a nonresident state reduces the net loss further to $42 million. The combined impact of these two changes is a reduction in the states' net revenue loss by almost 60 percent compared to H.R. 3359 as originally introduced.

Table 3
Revenue Impacts of Alternative Versions of
the Mobile Workforce State Income Tax Act

Mobile Workforce Bill Proposals	Net Impact FY 2008 Levels	Change in Net Impact
1. Initial proposal with a 60-day threshold	-$102.1	
2. Proposal with a 30-day threshold	-$46.5	-$55.6
3. Proposal with a 30-day threshold and a revised definition of "day" in a state	-$42.0	-$4.5
Total Change in Proposal Impacts		**-$60.1**

Mr. COBLE. Thank you, Mr. Crosby.

Thanks to each of you.

Now, as we pose questions, we will try to comply with the 5-minute rule. So if you could keep your responses terse, we can move along. I would appreciate that.

Mr. Porter, can you explain how taxes paid to a nonresident State are generally treated by the resident State for tax purposes, and how will this bill affect this treatment?

Mr. PORTER. Generally, if you are a nonresident and you come and work in a State, they are going to withhold taxes. So you are going to have to file a tax return in the nonresident State.

And typically, the resident State will give you a credit for the tax that you have paid up to the amount that the resident State would generally tax you on that amount. So, in other words, if you are in a higher tax rate at, say, 6 percent, a State that only has a 4 percent rate is going to give you a 4 percent credit equal to that. That is typically in the area that I am in—in West Virginia, Ohio, Kentucky—a practice that I see.

This bill would change that just primarily on the first 30 days that when you are working in a State, you would not have to pay State taxes in the nonresident State. So you would pay it in the resident State.

Mr. COBLE. Thank you, sir.

Mr. Carter, do you acknowledge that there is a patchwork among States' income tax laws that make or that create administrative burdens for small businesses in particular?

Mr. CARTER. Mr. Chairman, I do. Delaware, our tax nexus for employees is very similar or modeled after New York State. One day in the State of Delaware, an individual is subject to taxation.

As you read into your testimony, other States have different models. Arizona is 60 days. So someone could be in the State of Arizona for 60 days before they are subject to taxation in Arizona.

So I do acknowledge that for businesses—in my prior career, I worked for JPMorgan Bank in their accounts payable area, and I was responsible for making sure that travel expenses were paid. But we did not communicate with the payroll department to tell people in the payroll department where the people were traveling. So it is a challenge for not only small businesses, but large businesses as well.

Mr. COBLE. I thank you, sir.

Mr. CARTER. You are welcome.

Mr. COBLE. Mr. Crosby, if Congress does not approve this bill, is there an individual State that has an incentive to reduce the administrative burden placed upon small businesses by the cumulative effect of diverse State income tax laws?

Mr. CROSBY. Mr. Chairman, it is not in the interest of any one State to change this statute because the benefits accrue to folks who live outside of the State. So, by definition, it is very difficult for a State legislator to put high on their priority list an issue which is going to benefit folks living somewhere else.

We have some wonderful State legislators in this country. A friend of mine, State senator Dwight Cook in North Dakota did marshal a change through his legislature this year. But I fear that we are not going to see a uniform or nationwide movement toward this and that North Dakota will prove to be the exception rather than the rule.

Mr. COBLE. I thank you.

Thank you, gentlemen.

I am now pleased to recognize the distinguished gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

The Multi-State Tax Commission has proposed a model statute, and I think it has got the 20-day rule in it. I haven't really put it to memory. And it would have a uniform standard similar, I think, to the legislation we have got here.

Mr. Carter, does this address the concerns, the legislation that you have, to some extent?

Mr. CARTER. It does, to some effect. Some of our concerns, as I laid out, are some of the definitions in the House rule you have right now. I do believe that the States, if we had an opportunity to work with the industry and with the Subcommittee staff, we could come to an agreement on the definition of days.

But there are other issues in the bill that I think need to be addressed.

Mr. COHEN. Other than days?

Mr. CARTER. Other than days, yes.

Mr. COHEN. Like what?

Mr. CARTER. Well, we talked about some of the definitions of what a day is. A definition of——

Mr. COHEN. It sounds like the title of a song.

Mr. CARTER. It does. But as to whether bonuses or stock options—not bonuses, but stock options, how they are treated in this type of legislation. I think there is some items that worked on, we could come up with a bill that is agreeable to both sides on this, and I don't believe that the day threshold is the—although it is important for someone like New York State because of the economic impact to them—is not the biggest hurdle.

Mr. COHEN. Mr. Crosby, are the definitions something you could work with Mr. Carter on and Mr. Webster and get this all worked out?

Mr. CROSBY. Yes, Mr. Cohen. After there was a hearing at the end of 2007, then-Chairwoman Sánchez of this Subcommittee directed the parties to work together. And under Mr. Johnson's aegis, we spent a considerable amount of time working with representatives for State and local government, and there are numerous changes in this version of the legislation to address some of the things that the Federation of Tax Administrators raised, including the definition of "day."

That was changed substantially to ensure that if a nonresident is only in one nonresident State, then it is a nonresident day, regardless of how long they are there. We certainly would be willing to continue discussions, were it acceptable to the sponsors. I think my concern is that I have the redline of the old bill and the letters that were exchanged between Mr. Johnson and Chairwoman Sanchez at the time discussing and detailing all the changes we have made, and there seems to be not a recognition on the part of the tax administrators.

And so, my fear is that we would make further changes and yet be back here in another Congress where there are further changes yet to be made. So, Mr. Cohen, we certainly would be willing to consider them and work with them, as long as there was a good

faith effort on their part that at the end of the process, they would support the legislation.

Mr. COHEN. So if they would support it at the end. And Mr. Carter, it was definitions, and what is your other issue? The days you said weren't important.

Mr. CARTER. Days were not a critical—although it is expensive to some of the States. It would cost Delaware. We are a 1-day State. New York, much more than us just because of the size of their economy. But there were a series of things.

Reciprocity, there are certain States that agree, irrespective of how many days a nonresident is in the State, New Jersey and Pennsylvania have reciprocity. So a Pennsylvania resident working in New Jersey is not subject to tax in New Jersey and vice versa. This bill does not recognize that.

Mr. COHEN. Mr. Crosby, why don't you incorporate that? That seems like it would be good for small business and for accountants?

Mr. CROSBY. That is an excellent question. In fact, what this bill does is set a threshold below which States cannot tax nonresidents. It does not prohibit a State from setting a higher threshold.

So those reciprocity agreements that exist right now, you can think of them as 365-day thresholds. They are perfectly acceptable under this legislation. We could specifically recognize them, and that is certainly not a concern.

The way the bill is drafted, though, it doesn't impinge upon those in any way, shape, or form.

Mr. COHEN. All right, Mr. Carter. Checkmate. [Laughter.]

What is your next problem?

Mr. CARTER. I think the recordkeeping provisions where it refers to fraud as being the criteria for whether the records are proper or not. That is a very high standard, almost impossible to prosecute against.

We have, in Delaware, we have a statute on tax fraud, and it is very, very, very difficult to prove if someone is committing fraud in the tax area. We normally prosecute, if we do, for not filing because it is such a high threshold.

One of the other issues that we have is with the concern with high-income individuals. We believe that someone earning $500,000 a year as being tracked where they go, come and go, maybe the 20-, 30-day threshold is not—for that person is not a low enough level, just because they are traveling all over the place and their income is so substantial. And their goings are easily tracked.

They are not the type of individual of the small business where the person is just popping in for 1 day because they get called up and they have to fix the pipes for the plumbing company, and they are crossing the State line.

So there are a number of things I think that we can work on and resolve to come up with a much more amenable piece of legislation to both the States and private industry.

Mr. COHEN. My time has expired. So I won't ask you about the right of return in the Golan Heights.

I yield back the remainder of my time.

Mr. COBLE. Thank you, Mr. Cohen.

The distinguished gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

And I am delighted to go last. If the distinguished gentleman from Georgia, who is an original cosponsor, would wish to take my turn, I am pleased to go last.

Mr. JOHNSON. I would. Thank you, Mr. Gowdy.

Mr. COBLE. The distinguished gentleman from Georgia is recognized.

Mr. JOHNSON. Thank you, Chairman.

Does anybody here know what Charlie Brown used to utter when Lucy would take the ball off the tee again, and he would kick and end up falling on his back? Does anybody know that?

Mr. COHEN. I don't think you can say that in public. [Laughter.]

Mr. JOHNSON. You knew this was coming for you, didn't you? Yes, I feel like Charlie Brown, and Mr. Cohen is my Lucy. And I think he has covered just about everything I would like to cover, and I will say thank you for doing that. And that kind of cuts down a little time on the hearing.

I will say, Mr. Crosby, yes, there was a new definition of what is a day, definition of a day. And no definition of what does "is" mean. What is "is?"

Mr. CROSBY. No, sir. That was not redefined.

Mr. JOHNSON. That was not in there, but there are some other things in there as well.

And Mr. Carter, we certainly want to work with you to clear up any problems that you may have with the bill. But I think it is moving pretty quickly toward adoption by this body, and I would encourage you to get with Committee staff and also my own staff and staff for Mr. Coble, see what you can work out on this thing so that we can go ahead and move it forward.

And that will be the extent of my questions and comments. Thank you.

And thank you, Mr. Gowdy.

Mr. COBLE. Thank you, Mr. Johnson.

Now the distinguished gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

I have just got a couple of questions, and they are broad, general questions.

Mr. Crosby, other than the complexities of compliance, what is your best argument for uniformity? And I get how complex it is. But other than the complexities of compliance, what is your best argument for uniformity?

Mr. CROSBY. I think the best arguments are the ones that Mr. Coble made in his introductory remarks in terms of the mobility and flexibility of the U.S. workforce.

As large and small employers alike are subject to additional recordkeeping burdens, large employers are burdened by or having to comply with Sarbanes-Oxley and Section 404, ensuring that they are in compliance with all applicable laws and regulations. This is an increasingly difficult area for them and requires a significant expenditure of resources, as well as a significant negative impact on the employees who are required to travel for work.

And so, my fear is that if we move forward without solving this problem, ultimately, you will have folks deterred from doing things

they would otherwise do. I have spoken to numerous business managers and employees who have relocated meetings from one jurisdiction to another because of the potential impact of having tax liability in a jurisdiction.

As I said, myself, I live in Maine. We have a 10-day threshold there. Massachusetts is 1 day. New Hampshire does not have a personal income tax. I know many regional businesses that now hold their meetings in New Hampshire, much to New Hampshire's benefit, because of the fear of holding those in Maine or Massachusetts and being subject to tax liability.

So, currently, the existing laws are negatively impacting commerce around the country, and I think that is probably, other than the complexity, the biggest concern with the existing patchwork of State laws.

Mr. GOWDY. And you are satisfied that there are no issues with the dormant commerce clause?

Mr. CROSBY. Yes, sir. I am.

Professor Wally Hellerstein, who wrote literally the casebook that is studied by State and local tax lawyers, testified before this Committee that this legislation is not only authorized by the Constitution but is exactly the type of legislation that the framers envisioned if they could have envisioned this type of legislation—what I will call a surgical insertion into State tax law to alleviate a burden without fundamentally altering the way State taxes work.

Mr. GOWDY. And if I will listen to the testimony correctly, there is nothing talismanic about 30 days, and that is open to negotiation?

Mr. CROSBY. Representative Gowdy, Mr. Johnson, when he first introduced this bill, started with 60 days. And that was based on survey data from employers regarding the number of employees that would fall outside of certain thresholds and then, in the spirit of compromise, was reduced later to 30 days.

Every reduction you make significantly increases the number of employees who would no longer be protected by the bill. So there is nothing talismanic about it. But certainly, any reduction means that fewer people would benefit from the legislation, so I think must be considered carefully.

Mr. GOWDY. Thank you. I would yield back the remainder of my time, Mr. Chairman.

Mr. COBLE. I thank you, Mr. Gowdy.

And I want to thank the Members of the Subcommittee for your attendance. I want to reiterate our thanks to the panel for your patience, as well as those in the audience.

And without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to, in fact, respond as promptly as you can, that their answers may be made a part of the record.

Without objection, all Members will have 5 legislative days to submit additional materials for inclusion in the record.

And with that, again, I thank the witnesses, and this hearing is now adjourned.

[Whereupon, at 3:54 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of the Honorable Steve Cohen
For the Hearing on "H.R. 1864, the Mobile Workforce State Income Tax Simplification Act of 2011"
Before the Subcommittee on Courts, Commercial and Administrative Law

Wednesday, May 25, 2011 at 1:30 p.m.
2141 Rayburn House Office Building

Mobility has long been the lifeblood of the modern American economy. Entire metropolitan areas depend on regional workforces where workers regularly cross state lines. Additionally, businesses often rely on their most skilled employees to travel and spend extended time periods away from home to work on projects where such employees' skills and expertise are essential.

States, meanwhile, have a legitimate interest in taxing income earned within their borders, including income earned by non-residents. Unfortunately, this sometimes leads to some confusion regarding when and where a non-resident is required to pay income tax and under what circumstances an employer is obliged to withhold such taxes and report relevant tax information.

H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011," is designed to address these concerns. The bill would, among other things, allow a state to impose income tax on a non-resident when the non-resident is present and performing employment duties for more than 30 days during the calendar year in which the income was earned.

The bill also clarifies employers' withholding and reporting obligations by specifying that an employer may either rely on an employee's determination of the time the employee expects to perform duties in a given state or use data from a time and attendance system which tracks where an employee performs duties on a daily basis in order to determine its tax-related obligations to that state.

My home state of Tennessee has no state income tax, so it does not stand to lose in any particular way if this legislation were enacted, as some other states' taxing authorities assert with respect to their states. If anything,

this legislation, if enacted, would have at least some positive impact for those Tennessee residents who work outside of Tennessee for 30 or fewer calendar days in a given tax year, as they could avoid paying state income taxes altogether. This bill could also provide some useful clarification for Tennessee businesses that depend on sending employees out-of-state.

I applaud the proponents of this bill for amending its language from the language originally introduced back in the 110th Congress specifically in response to the concerns raised by the states. Most significantly, the original language had required that a non-resident employee work more than 60 calendar days before a state could tax that non-resident. The revised language, as noted, reduces that threshold by half, to 30 days.

My understanding is that the states and proponents of H.R. 1864 are very close to agreement on this matter and that the only remaining major sticking point appears to be the appropriate threshold number of days. I have been

told that the states are pushing for a 20-day threshold. In my mind, the difference between 20 and 30 days is not insurmountable. This Subcommittee has considered this issue for more than four years now. I strongly urge the states and other interested parties to reach consensus on this matter soon.

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

Today we discuss H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act," a bill to address concerns employers have raised about different state withholding standards.

I am encouraged that the business community has reached out to the states to improve upon this legislation since the 110th Congress. And I sympathize with employers for the difficulties they have expressed on behalf of their record-keeping and employees. And the states have acknowledged that there is problem.

However, the legislation as written does not address all of the concerns the states have addressed and will likely inhibit the ability of states to tax, which will lead to lost state revenues.

If States cannot tax the income earned within their borders, it could impede their ability to provide needed services which many of us depend upon. States may be forced to furlough their dedicated and hard working government employees.

I understand that some states—especially New York—would stand to lose tens of millions of dollars in revenue if the bill is enacted in its current form. My own state of Michigan would lose much needed revenue, nearly enough to cover the funding cut to libraries and the elimination of dairy inspectors that Michigan Governor Snyder has proposed. These programs support the education and protection of our children.

With state revenues projected to suffer for the foreseeable future in this economic climate, Congress should be wary to pass legislation which may diminish state revenues.

I am concerned that the bill's 30-day threshold, which exceeds the thresholds in several states, would allow an employee to work in several states about six weeks at a time and not have to pay taxes in those states. Those states would lose revenue while some employees would avoid paying taxes.

The Multistate Tax Commission has proposed a model statute similar to this legislation but establishing a 20-day threshold. Others have proposed a hybrid threshold of 20-days or $20,000 earned in a state in a calendar year. Those thresholds seem more reasonable.

I am also concerned about the timekeeping component in this legislation. In some instances timekeeping is left to the employees while in others the employer keeps track of the days its employees work in other states. These different timekeeping standards may lead to tax avoidance and confusion.

A further discussion on the timekeeping standard would benefit all interested parties and allay some of the concerns with this bill.

Otherwise, we may need to introduce separate legislation to improve upon this bill.

Thank you and I look forward to hearing from the witnesses.

Prepared Statement of the Honorable Henry C. "Hank" Johnson, Jr., a Representative in Congress from the State of Georgia, and Member, Subcommittee on Courts, Commercial and Administrative Law

Chairman Coble, Ranking Member Cohen, I thank you for holding this hearing on H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011."

This is an important bill that will help workers and businesses large and small. I have been working on this bill since I was a freshman in the 110th Congress, and I am pleased to have introduced it in this Congress with Chairman Coble.

We live in an ever-increasing mobile economy. Every day, thousands of Americans travel outside of their home state on business trips for brief periods of time.

Many states have their own set of requirements for filing non-resident individual income tax returns that most Americans are not aware of and don't understand.

For example, if an Atlanta-based employee of a Chicago company travels to headquarters on a business trip once a year, that employee would be subject to Illinois tax, even if his annual visit only lasts a day.

However, if that employee travels to Maine, her trip would only be subject to tax if her trip lasts for 10 days. If she travels to New Mexico on business, she would only be subject to tax if she was in the state for 15 days.

The Mobile Workforce State Income Tax Simplification Act would fix this problem by establishing a fair and uniform law that would ensure the correct amount of tax is withheld and paid to the states without the undue burden of the current dysfunctional system.

Consistent with current law, H.R. 1864 provides that an employee's earnings are subject to full tax in his or her state of residence. In addition, this bill would only subject employees who perform employment duties in a nonresident state if they work in that state for more than 30 calendar days.

At a time when more and more Americans find themselves traveling for their job, this bill is a common-sense solution that helps workers who are employed in multiple jurisdictions by simplifying their tax reporting requirements.

We are all aware there's a problem, and this bill is the solution.

It not only simplifies the system, but makes it fair for people who work in multiple jurisdictions and assists businesses as they comply with complex tax laws.

In an economy that is beginning to recover from the devastating recession, this bill makes sense.

After three years of championing this issue, I appreciate this Subcommittee's interest in this legislation.

I look forward to working with all of you to move the bill through Congress and to the President's desk for signature.

Thank you, Mr. Chairman, and I yield back the balance of my time.

American Insurance Association

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May 25, 2011

VIA EMAIL

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Re: Hearing on H.R 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011"

Dear Chairman Coble and Ranking Member Cohen:

Thank you for the opportunity to submit this statement for the record of the May 25, 2011 hearing on H.R. 1864. The American Insurance Association (AIA) strongly supports the Mobile Workforce State Income Tax Simplification Act.

AIA is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write nearly $100 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

Employees of AIA member companies must often travel for temporary periods outside their home state on business travel. For example, when a policyholder suffers a loss, a property-casualty insurer sends a claims adjuster to evaluate and settle the claim. This often requires the adjuster to travel to a different state. When claims involve an event like a tornado, hurricane or other disaster, the adjuster may be in a non-resident location for multiple days or even weeks responding to multiple claims. The variation in current state tax standards may then subject the adjuster to the burdensome task of filing tax returns in multiple jurisdictions.

We would also note that in a number of cases an employee spending just one day in certain states results in reporting, withholding and filing obligations. If that employee were in a long term compensation plan that vested over several years, the employee would be required to file a return in that state for each year of vesting. Moreover, the crazy quilt of states having their own rules and exceptions and definitions imposes an enormous burden on employees. For example, in some cases, if an employee's regular place of business is state A, the employee spends a day working in state B, sleeps over in state B and catches an early morning plane to work in state C, both states B and C claim that the employee worked in their state on the day of travel to and meetings in state C. All of these situations cause an employer to incur increased expenses to comply with tracking and differing withholding requirements for each impacted employee.

The Mobile Workforce State Income Tax Simplification Act of 2011 would establish fair and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing undue burdens on employees and their employers. It recognizes the changed nature of the American workplace that requires many employees to travel and work in multiple jurisdictions.

We thank you for holding today's hearing on this important bill and strongly urge its expeditious consideration.

Sincerely,

Allan J. Stein
Vice President – Associate General Counsel

Melissa W. Shelk
Vice President – Federal Affairs

American Payroll Association
Government Relations • Washington, DC

May 25, 2011

Statement for the Record Submitted to
House Judiciary Subcommittee on Courts, Commercial and Administrative Law
In support of HR 1864, the Mobile Workforce State Income Tax Simplification Act of 2011

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Cohen,

Thank you for the opportunity to submit this statement for the record for the May 25, 2011 hearing on H.R. 1864 on behalf of the American Payroll Association. APA strongly supports H.R. 1864 and encourages you to move it swiftly through the Subcommittee.

APA is a non-profit professional association with more than 20,000 members. Most of our members are the payroll managers for their employers, and some of our members work for payroll service providers, who in turn process the payrolls of another 1.5 million employers.

In addition, APA itself is a small employer with 75 employees in 10 states. APA employees travel regularly among the 50 states providing educational services to payroll professionals.

Inconsistent State Rules
Of the 41 states with income tax withholding, most tax all wages earned within their borders by residents of other states. Some have varying de minimis amounts, or thresholds, that need to be exceeded before withholding is required. The thresholds differ widely, including various numbers of days worked within the state and various wage amounts earned.

Just as the United States taxes its citizens and residents on their worldwide income, so do the states impose a tax on their residents who earn income outside their borders. If the employer has nexus – that is, a business connection – within the employee's state of residence, it generally must withhold tax for the state of residence in addition to the state in which the services are performed. The states vary on their requirement to withhold tax from their residents who work elsewhere. Some want full withholding, some want withholding only if there is no withholding being taken for the state in which the services are performed, and some want withholding less a credit for whatever withholding is taken for the state in which the services are performed. And then besides the withholding requirement, each state also has its own requirement for reporting the wages on Form W-2.

It is the duty of payroll professionals to ensure that taxation is happening properly for the state in which the employee is working as well as the state in which the employee claims residency.

Each state's rule about how it taxes nonresidents who work within its borders is different. And each state's rule or rules about how it taxes its own residents who work elsewhere is different and often depends upon what the nonresident state requires.

So, what an employer does for a California resident who temporarily goes to work in New York is completely different from what is done for the same employee if he or she goes to work in New Jersey or Georgia. And the rules are again entirely different if the employer sends an Oregon resident to temporarily work in New York, New Jersey, or Georgia. Each pairing of states has different rules.

The current process is not only burdensome but costly to both employees and employers.

Employer Issues

Businesses would benefit a great deal and in many ways by the establishment of a uniform threshold of time to be exceeded before nonresident income tax withholding is required. It will allow businesses to remove many employees from the costly nonresident withholding process and to focus compliance efforts and education on the remaining few. In addition, it will be much easier to comply with a single standard across all the states and localities compared with the patchwork of laws in the 41 states and thousands of localities with income tax withholding.

Employers will be able to avoid the expensive process of withholding taxes and filing Forms W-2 for multiple states in which an employee will spend only a short amount of time. To the extent that a business's employees perform services in a particular state, but no single employee spends enough time in that state to exceed the threshold, the business will never be faced with the costs of:

- registering for a withholding tax account in that state,
- setting up that state's withholding tables in its payroll system,
- learning that state's withholding tax laws and regulations,
    - determining which benefits are taxable wages and
    - determining the depositing and filing due dates
- withholding that state's tax,
- depositing those taxes,
- filing employment tax returns, or
- filing Forms W-2 with that state.

Currently, an employer has to perform all the above tasks – many on very short order – the moment any employee begins to perform services in a new state (unless it is one of the few states that has a threshold to be exceeded, a state that has a reciprocal agreement with the employee's state of residence, or a state without an income tax).

After the systemic hurdles are overcome, the payroll department deals with many questions (and sometimes suffers protestations) from employees who are seeing a new state's tax withheld from their paychecks, sometimes in addition to taxes still being withheld for the state of residence, and has to explain to the employees that they will have to file a personal income tax return for that state.

These tasks add great expense to a business's payroll department budget. A lot of time and resources can be spent on the relative few employees who are doing this sort of business travel compared with the broader employee base. Sometimes, to appease or compensate employees who travel throughout many states for which withholding is taken, an employer will pay for the preparation of all those nonresident income tax returns. Since tax preparation assistance is a taxable benefit, the employer must add the value of it to the employees' wages, and, to save the employees from an additional tax burden, many employers will pay the taxes on that benefit. Some employers will go so far as to reimburse the employee for any extra taxes he or she is paying as a result of working in multiple states (compared with the tax he or she would have paid had the employer not required services to be performed outside the resident state). Such a reimbursement is also a taxable benefit.

Here's an example of the cost borne by just one employer, drawn from the experience of an APA member: The employer has 5,000 employees, but only 250 of them work in multiple states. For the past few years, the company spent approximately $50,000 for tax preparation assistance provided to employees and approximately $60,000 in salary for time spent by payroll and human resource staff for the special handling of its mobile workforce. That's $110,000 for the management of only 250 out of 5,000 employees.

Taxpayer Issues

The individual taxpayer, or employee, who does not spend enough time in another jurisdiction to exceed the proposed uniform threshold would also benefit from the passage of HR 1864, in terms of expense, cash flow, and filing burden.

Currently, if an employee performs temporary service in another state without a threshold but with a higher tax rate than that of the state of residence, he or she suffers an irretrievable increase in tax expense. This is especially true if the employee's home state doesn't have an income tax.

However, even if the two states have a very similar tax structure, the employee can suffer a significant cash flow problem if the resident state requires simultaneous full withholding of its tax (that is, no credit is allowed for the withholding for the worked-in state). When the employee files a personal income tax return with the resident state, a credit will be allowed for the tax liability to the worked-in state, and the employee can get a refund, but that can be well over a year after the tax was originally withheld.

In addition, the employee will have to file a personal income tax return in the nonresident state(s). Each state has its own tax rules, forms, and filing processes. Many employees in these situations hire a tax professional and bear the expense of paying someone to do this for them.

What is especially wasteful in the case of an employee who spends a short amount of time in another state is that he or she will very possibly have earned less than the threshold of income that is even subject to that state's tax. In such a situation, the employee, of course, has to file a state personal income tax return and will likely get a refund of all of that withholding.

So, because there is no uniform threshold of time to be exceeded before nonresident income tax withholding is required, employers must withhold tax and report wages, employees must file income tax returns, and states must process wage reports and income tax returns of individuals for whom they will refund all taxes withheld. That's a lot of time, effort, and burden with no positive return for the employer, the employee, or the state.

The American Payroll Association and its 20,000 members strongly recommend that you support this legislation so that the burden and cost of administering multistate taxes by American workers and American businesses can be reduced and so that we can ensure fair and consistent handling of this employment issue and the related taxes across the nation.

More employers will comply with a law that is uniform across all states and localities and that is federally supported, versus the current patchwork of laws.

Sincerely,

William Dunn, CPP
Senior Manager of Government Relations
American Payroll Association

Duke Energy.

KEITH G. BUTLER
Senior Vice President, Tax

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May 20, 2011

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Cohen:

Duke Energy Corporation strongly supports enactment of H.R. 1864, The Mobile Workforce State Income Tax Simplification Act of 2011. We believe, if enacted, the legislation will significantly reduce the inefficient and non-coordinated tax obligations Duke Energy and its employees face in the five regulated and over 20 unregulated states we serve.

As you may know, Duke Energy is headquartered in Charlotte, North Carolina and is one of the largest power companies in the United States. We supply electricity to approximately 11 million people in our regulated service territories of North and South Carolina, Kentucky, Ohio, and Indiana. In addition, Duke Energy builds and operates an increasing amount of commercial power projects in numerous states throughout the country.

As a result of our diversified operations, many of Duke Energy's highly talented workforce travel outside their home state on business trips for temporary periods of time. With each state having its own set of, and often varying, requirements for filing non-resident individual income tax returns along with commensurate rules for employer withholding, significant confusion exists on the part of our travelling employees, in addition to the unnecessary complexity and added costs for Duke Energy to ensure it is in full compliance with the states' rules. In many instances, variations in state tax laws can lead to double taxation for our employees or no withholding by our Company – neither of which is an optimal outcome and leads to unnecessary exposure for our employees and the Company.

Imposing withholding taxes on workers that are in a state for business less than 30 days is an inefficient way for states to attempt to increase revenues and could potentially result in reduced economic development within that state. H.R. 1864 establishes fair, administrable and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing undue burdens on companies like Duke Energy and its employees.

I hope that H.R. 1864 will move swiftly through the legislative process and I would be pleased to assist you or your staff with any additional information regarding this matter. If you or other members have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Keith G. Butler

Hormel Foods Corporation
1 Hormel Place
Austin MN 55912-3680

May 25, 2011

VIA EMAIL

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Re: Hearing on H.R 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011"

Dear Chairman Coble and Ranking Member Cohen:

Thank you for the opportunity to submit this statement for the record for the May 25, 2011 hearing on H.R. 1864 on behalf of Hormel Foods Corporation and its subsidiaries. Hormel Foods Corporation strongly supports H.R. 1864 and encourages you to move it swiftly through the Subcommittee.

Hormel Foods Corporation, based in Austin, Minn., is a multinational manufacturer and marketer of consumer-branded food and meat products, many of which are among the best known and trusted in the food industry. The company leverages its extensive expertise, innovation and high competencies in pork and turkey processing and marketing to bring branded, value-added products to the global marketplace. The company is a member of the Standard & Poor's 500 Index, Dow Jones Sustainability Indexes, Maplecroft Climate Innovation Indexes, Global 1000 Sustainable Performance Leaders and was named one of "The 100 Most Trustworthy Companies" by Forbes in 2010. The company enjoys a strong reputation among consumers, retail grocers, foodservice and industrial customers for products highly regarded for quality, taste, nutrition, convenience and value. With 19,500 employees, Hormel Foods operates in all 50 states.

Thousands of Hormel Foods' employees travel outside their home state on business trips for temporary periods. Each state has it own set of requirements for filing non-resident individual income tax returns and commensurate rules for employer withholding on those employees. Complying with these multiple requirements are challenging for Hormel Foods' and its employees on a number of fronts.

Our employees rely on the Company to withhold tax correctly and report income and tax withheld via a W-2. Employees at all levels are routinely asked to work at Hormel Foods facilities in other states for brief periods of time to share their expertise or learn from others in their field. Many of our traveling employees do not have the resources to hire a tax accountant with multi-state tax capabilities or the capabilities to prepare such returns themselves, but they find themselves with W-2 reporting in multiple states. Additionally, employer withholding requirements in each state are not completely in sync with each state's nonresident income tax filing requirements, so an employee may unwittingly be required to file a tax return and owe tax in a state where no employer tax withholding was required.

The Company faces challenges to comply with multiple state tax withholding requirements because unlike professional service firms billing for hourly activity, Hormel Foods is not in a business that has systems in place to monitor the day-to-day work activities and location of each employee. Therefore, to comply with multi-state tax withholding requirements, the Company must either invest in building expensive software to track its employees' movements, or attempt to glean this information from its travel expense information. Also, the inconsistency of tax rules from state to state makes employer withholding tax compliance very challenging to automate, so fairly advanced accountants with a solid understanding of the rules must review business travel case by case to remain compliant with the laws of each United States taxing jurisdiction.

The Mobile Workforce State Income Tax Simplification Act of 2011 would establish fair, administrable and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing undue burdens on employees and their employers. Hormel Foods Corporation respectfully requests that H.R. 1864 be favorably considered by the Subcommittee.

Sincerely,

Jana L. Haynes
Hormel Foods Corporation
Director of Taxes

Robert C. Melendres
Chief Legal Officer and Corporate Secretary

May 25, 2011

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Re: Hearing on H.R 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011"

Dear Chairman Coble and Ranking Member Cohen:

Thank you for the opportunity to submit this statement for the record for the May 25, 2011 hearing on H.R. 1864 on behalf of International Game Technology. International Game Technology strongly supports H.R. 1864 and encourages you to move it swiftly through the Subcommittee.

International Game Technology is a global leader in the design, development and manufacture of gaming machines and systems products with its headquarters and majority of its workforce located in Nevada.

With business interests and customers in many states, IGT is required to employ a mobile workforce at all levels of employment, from service technicians and sales managers to senior executives, all traveling to represent our company in various capacities and servicing the needs of our customers.

This bill, if enacted, would enhance compliance with state personal income tax laws and greatly simplify the onerous burdens placed on employees who travel outside of their resident states for temporary periods and on employers who have corresponding withholding and reporting requirements.

Most states have their own set of requirements for filing non-resident individual income tax returns and commensurate rules for employer withholding on those employees. Most individuals are not aware of this patchwork of non-resident state income tax filing rules, and many employers are required to incur extraordinary expenses to comply with those withholding requirements.

The Mobile Workforce State Income Tax Simplification Act of 2011 would establish fair, administrable and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing undue burdens on employees and their employers.

International Game Technology respectfully requests that H.R. 1864 be favorably considered by the Subcommittee.

Sincerely,

Robert Melendres
Chief Legal Officer & Corporate Secretary

International Game Technology

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STATEMENT OF LOCKHEED MARTIN CORPORATION

to the

House Judiciary Subcommittee on the Courts, Commercial and Administrative Law

for the record of the hearing on

H.R. 1864, the Mobile Workforce State Income Tax Simplification Act of 2011

May 25, 2011

Lockheed Martin Corporation is pleased to have the opportunity to submit this statement for the record of the May 25, 2011, House Judiciary Subcommittee on the Courts, Commercial and Administrative Law hearing on H.R. 1864, the Mobile Workforce State Income Tax Simplification Act of 2011. We support the uniform state tax withholding requirements established by H.R. 1864 and encourage you to report the bill favorably out of the Subcommittee.

Headquartered in Bethesda, Maryland, Lockheed Martin employs over 125,000 people and conducts business in all 50 states and the District of Columbia. We are a global security company that is principally engaged in the research, design, development, manufacture, integration, and sustainment of advanced technology systems, products and services. Our principal customers are agencies of the Federal Government.

Problem

Our customers require that our employees travel frequently between states and as such, our employees take about 320,000 business trips a year by air. Most of these business trips span only a few days and total less than 30-60 days per year. Lockheed Martin places a high priority on our employees being in full compliance with all state tax requirements. We spend significant resources to comply with all state requirements for withholding and reporting on employees who travel to nonresident states. Nevertheless, as a practical matter it is impossible to assure 100% compliance with states' rules for withholding, reporting, and individual return filing given that there are hundreds of thousands of permutations of origin and destination states for our employees who travel on business.

The current system imposes complex personal nonresident return filing obligations on traveling employees even when only a few days of travel are involved. As a result, many traveling employees are unsure of their tax obligations outside their resident state. When a traveling employee does file in a nonresident state, they likely incur additional outside preparation costs. Since most of these nonresident filings involve minimal taxes, the states' administrative costs to process nonresident returns are disproportionate to the taxes involved. Without uniform withholding rules for all states, tracking and maintaining accurate records is burdensome.

Solution

The Mobile Workforce State Income Tax Simplification Act provides for a uniform, fair and easily administered law and helps to ensure that the correct amount of tax is withheld and paid to the states without the undue burden that the current system places on employees and employers. Consistent with current law, the legislation provides that an employee's earnings are subject to full tax in his/her state of residence. In addition, under the legislation, an employee's earnings would be subject to tax in the state(s) within which the employee is present and performing employment duties for more than 30 days during the calendar year.

With a uniform withholding rule for all states, we will be able to better track our employees and ensure that our employees and our withholding are in full compliance.

Conclusion

The Mobile Workforce State Income Tax Simplification Act of 2011 would create uniform state tax withholding rules and lessen the tax compliance burden of employees and their employers. Lockheed Martin respectfully requests that H.R. 1864 be favorably reported out of the Subcommittee.

May 25, 2011

VIA EMAIL

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Re: Hearing on H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011"

Dear Chairman Coble and Ranking Member Cohen:

Thank you for the opportunity to submit this statement for the record for the May 25, 2011 hearing on H.R. 1864 on behalf of the New Jersey Chamber of Commerce. We strongly support H.R. 1864 and encourage you to move it swiftly through the Subcommittee.

The New Jersey Chamber of Commerce is a business advocacy organization which represents 1,500 member companies of all sizes and industries.

Many of my members' employees travel outside their home state on business trips for temporary periods. Each state has its own set of requirements for filing non-resident individual income tax returns and commensurate rules for employer withholding on those employees. The employer community must expend considerable time and resources to comply with these onerous rules.

The Mobile Workforce State Income Tax Simplification Act of 2011 would establish fair, administrable and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing undue burdens on employees and employers. The New Jersey Chamber of Commerce respectfully requests that H.R. 1864 be favorably considered by the Subcommittee.

Thank you for considering our views. Please contact me if I can provide additional information.

Sincerely,

Mary Ellen Peppard
Manager, Government Relations

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Unisys Corporation
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UNISYS

May 23, 2011
Via E-Mail

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and
Administrative Law Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Re: Hearing on H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011"

Dear Chairman Coble and Ranking Member Cohen:

Thank you for the opportunity to submit this statement for the record for the May 25, 2011 hearing on H.R. 1864 on behalf of Unisys Corporation (Unisys). Unisys strongly supports H.R. 1864 and encourages you to move it swiftly through the Subcommittee.

Unisys is a worldwide information technology (IT) company. We provide a portfolio of IT services, software, and technology that solves mission-critical problems for clients. We specialize in helping clients secure their operations, increase the efficiency and utilization of their data centers, enhance support to their end users and constituents, and modernize their enterprise applications. To provide these services and solutions, the company brings together offerings and capabilities in outsourcing services, systems integration and consulting services, infrastructure services, maintenance services, and high-end server technology. Unisys services commercial organizations and government agencies throughout the world.

Unisys does business in all fifty states and the District of Columbia, employing more than 7,000 employees in the United States. Many Unisys employees travel outside their home state on business trips for temporary periods of time. Each state has its own set of requirements for filing non-resident individual income tax returns and commensurate rules for employer withholding on those employees. Complying with these various requirements is a complex and costly administrative burden for our company and for our employees who perform interstate business travel.

The Mobile Workforce State Income Tax Simplification Act of 2011 would establish fair, administrable and uniform rules to ensure that the proper amount of tax is paid to state and local jurisdictions without placing undue burdens on employees and their employers. Unisys respectfully requests that H.R. 1864 be favorably considered by the Subcommittee.

Sincerely,

Nancy L. Miller

Nancy L. Miller
Assistant Treasurer

Employer Experiences with Nonresident Personal Income Tax Withholding

The Council On State Taxation (COST) and the American Payroll Association (APA) asked their members to provide insight into the effect that existing disparate state laws regarding taxation of nonresidents has on them. The following stories were provided to COST and the APA.

Compliance is costly and difficult for small businesses. While it is the intention of employers to comply with federal, state and local laws some of these laws are very difficult to manage. One in particular is the multi-state taxation of employees. In most cases employees work primarily in one state and will occasionally make trips to other states to conduct business or attend conferences. Many states have laws that require employers to withhold for the state they are visiting if certain requirements are met. The problem in meeting these requirements are as follows:

- States have different requirements that make compliance difficult for employers.
- Payroll systems are not built to allow withholding in multiple locations during the pay period. Therefore, compliance is a time-consuming manual process.
- Collecting the data from the employee is very difficult. Payroll systems are not tied into travel systems to capture when an employee is in a state that requires withholding and reporting.

Due to the fact that the data is difficult to collect and report most employers are not compliant in this area. In order to become compliant for each state it would require an employer to add up to two or three dedicated employees to do this tracking manually. This could add a cost of approximately $150,000 each year to the payroll department budget. The Mobile Workforce State Income Tax Simplification Act would provide consistency for reporting and withholding in states. It would minimize the number of employees that we would have to track and it also would reduce the number of manual transactions that the payroll department would have to make to the employee record.

A national standard is the only solution. We employ roughly 600 employees in 46 states. We have several customer service centers throughout the United States that most of our employees work out of and we have some resident technicians who live in remote locations that work out of their homes. We have about 12 employees total that travel out of their state on an occasional basis to work a job. I spend roughly three hours every other week hand figuring out-of-state/city taxes on some employees as our payroll system isn't designed to tax two different states or taxing authorities on the same paycheck. Some of these employees may only pay in $30 to $100 a year

into a different taxing authority and they hate having to file tax returns at year end for just that little amount in a different state/city. In general, it's just a pain in the neck. I'm guessing there is no getting around this without some kind of national standard.

Resources currently devoted to compliance would be better spent elsewhere. We have about 200 stores with about 6000 active employees with a 40%+ turnover ratio throughout various states. We have locations in more than 30 states. We have a traveling team that travels state-to-state to prepare for stores opening, which means that technically they should be taxed in each state they work in. We attempt to comply with the various states' laws, but it is nearly impossible. We sometimes have to issue W-2c as we may have taxed the employee incorrectly. A national standard would allow my team to spend their time in other areas that may be overlooked now.

Employees are harassed with frivolous tax assessments. A State audited my employer and analyzed the W-2 of every employee. For every employee that had some withholding in the State (over 1,000), the State assessed tax as if the employees were in the State every day. This shifted the burden of proof to my employer and required my employer to explain, for each employee, why our withholding for the State was correctly less than 100%. Reasons for less than 100% withholding for the State include:

- Employee moves into or out of the State mid-year.
- Employee had a long-term temporary assignment in another state or country.
- Employee completed paperwork to allocate wages as prescribed by the State.
- Supplemental tax rate change occurred mid-year in the State. Auditors used the highest rate for entire year instead of the rate in effect at the time of payment.
- Imputed income added at the end of the year related to personal use of company provided vehicles and/or inclusion of income for group term life insurance in excess of annual limitations are not subject to withholding in the State.

Nevertheless, the State threatened and carried through on its assessment of penalties claiming that my employer "should have known" that some of its employees (less than 1%) traveled for more than a few weeks into the State because my employer reimbursed their expenses for trips into the State. In reality, expense reporting systems are not linked to payroll systems and the fact that travel expenses are reimbursed does not automatically mean that the payroll department is aware of travel to the State.

Full compliance is impossible. I have no idea what the cost of full compliance is because we can't fully comply with current laws. The vast majority of our employees who travel are exempt, so they don't complete timesheets. Consequently, we have no way of knowing how many hours they worked in which state and when those hours were worked. We can, however, keep track of employees who spend at least a couple of months in one state because those employees require the exclusive use of one of the offices in our branches. This kind of arrangement, though, is extremely unusual. In the past six years, we have had only one employee who worked in another branch for more than a couple of months. We have 250 exempt employees and 270 non-exempt employees. We have offices in four states.

My employer operates in 50 states, internationally and in over 200 local jurisdictions. Each state, country and locality has in which it operates has different withholding thresholds and rules. My company has over 100,000 employees. The administrative burden of tracking and complying with every jurisdiction is already cost prohibitive and it would cost at least $5 million in additional internal and external costs to devise and implement a system that could adhere to each and every rule. Additionally, the net result of all of this effort is often as little as $1,000 being remitted to a nonresident jurisdiction. My employer does remit withholding on all resident employees in every jurisdiction. The additional burden stems from the multitude and variety of rules at the state level especially in states with thresholds as low as 14 days.

Current law confuses employees and their employers. My employer has devoted 1200 hours and $115,000 managing withholding for nonresidents on just a quarterly basis. We have many disgusted employees as well. Here are the issues for my employer:

- Payroll systems do not have the capability to effectively manage multiple work locations.
- Accurate and systemic recording of travel to nonresident states does not exist. The employer can't tell from travel logs what time of day employees leave to or from a nonresident state to determine if that is a day worked.
- Employees are very confused regarding their responsibilities to nonresident states.
- Employees' accountants have been confused on how to complete nonresident forms and how to take credit on their resident state returns.

Many payroll systems are incapable of tracking employees working in more than one state. My employer has 250 employees in 3 states. Even though we are a small employer there are

difficulties with the various state rules. Not all payroll systems are capable of tracking employees working in more than one state. Ours would have to have an upgrade that allows "at will" change of state. At this time we would have to set up an additional pay code for each state and manually enter the time. I am a one person full charge payroll office and am responsible for non payroll duties as well. I have no idea what the cost ramifications would be of full compliance with current law. I do know that there would be extensive time involved if this had to be done manually and would possibly require additional personnel. I'm assuming that the offices would actually be able to get the information back to the payroll department in a timely manor, which is a big assumption.

Different tax laws impose enormous administrative burden on employees and employers. Compliance with state regulations regarding employees who travel and work in multiple states requires an enormous amount of administrative paperwork. My company employs 2000 people in 6 different states. A small percentage of those employees are required to travel to and from these facilities and most often for a few days at a time. They must maintain travel logs and report the information to payroll so the applicable state laws can be manually applied.

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